'OBSCENITY' AND THE COURT MEL FRIEDMAN

THE NATION

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Schlesinger and Kennedy: HISTORIAN IN THE SERVICE OF POWER

Ronald Radosh

MENAHEM BEGIN
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Irene L. Gendzier

EL SALVADOR SUPPRESSES THE CHURCH

Penny Lernoux

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EDITORIALS

System Fixer

Congress's probe of itself in the Korean bribery scandal will be conducted by a famous lawyer who represents the very interests that control Congress. Does that mean that "the interests" will be investigating their own legislative mechanism, which is so useful to them, and that therefore truth will not out and that the guilty will go free? Not necessarily. But the appointment of Leon Jaworski by the House leadership to head the long-stalled investigation must, in view of the circumstances of his appointment, be looked at with deep suspicion.

No better blanket of foam could have been found. Jaworski's comfortable eminence will smother for a while the smoldering nastiness of the Korean business with Congress—in which as many as a third of the members are said to have benefited financially from a peculiarly unpleasant combination of money and national security "patriotism." The House urgently needed, if it cared at all for its repute, a Jaworski to seem to put things right. And now it has him—the man picked by General Haig to succeed Archibald Cox when he was fired by Nixon as the Watergate Special Prosecutor, the man who failed to prosecute Nixon because he doubted that our political institutions could stand the strain.

Is there any reason to think that, in a case apparently involving wholesale bribery of the national legislature, such a man will dare to pursue the ends of justice no matter what the costs to institutional stability? Of course not, unless Leon Jaworski should undergo a conversion more remarkable than the one on the road to Damascus. This Texas lawyer comes from the company of compromisers that has flourished down his way, the adjusters and fine tuners who fix things so that the public is not too outraged when the interests get their way. He's a system fixer, but more like a tinker hammering dents out of pots than a plumber (if we may use that term after Jaworski's Watergate experience) overhauling the pipes in a clogged system.

Given the pervasive air of corruption hanging over the House in the Korean bribery matter, it will take all of Jaworski's skills to avoid the further discrediting of that body while he pursues, as they say, the ends of justice. And he will be risking his own reputation as a pillar of the bar, not to say the Establishment.

The House leadership is ecstatic over Jaworski's acceptance of the job of counsel to its "Ethics" Committee. It gets them out of a nasty spot and so they have allowed him to write apparently tough specifications for his investigation. His contract is with the House leadership itself, not with the foot-dragging Committee on Standards of Official Conduct headed by the courtly old go-alonger, Rep. John Flynt of Georgia. It lets Jaworski write his own subpoenas and he can be dismissed only by a vote of the whole House. The appearance of independence is there, all ironclad, but the doubts remain.

They come not only from Jaworski's own record as a juggler of the status quo but from the circumstances that led to his appointment. He takes over, just as he did the office of Watergate Special Prosectuor, after a truly independent lawyer had been eased out by the constituting authority. In the Watergate case, Cox had been axed by Nixon's men when his probe got too close to the bone. In this one Philip Lacovara (who had been counsel to both Cox and Jaworski in the Watergate operation) was forced to resign because he could not get the "Ethics" Committee off the dime and on toward the dirty dollars.

Some might be discouraged at the prospect of again playing the role of cleanup man in a messy situation, but not Leon Jaworski, with his instinct for fixing. Two of his colleagues in the Special Prosecutor's office put the matter harshly but not unfairly in a recent book on that experience entitled *Stonewall*. Writing about their first reaction to the appointment of Jaworski to replace Cox, Richard Ben-Veniste and George Frampton declare that "Jaworski represented no less than the man President Nixon had procured to perpetuate the biggest fix of all time." His decision not to prosecute that unindicted co-conspirator and the ambiguous way in which that "action" was communicated to the White House and thus fitted into the machinery that produced Ford's pardon justify such dark suspicions.

Just before Jaworski got his second emergency summons to Washington, he made a statement on an altogether different matter which has an odd relevance to his new responsibilities. Attacking a measure that would have created a consumer protection agency, which the big-business community bitterly opposes, Jaworski wrote that it was "contrary to the most fundamental of our democratic principles to vest in one unelected person the authority to represent, legally and politically, the interests of all the people." The language of that pompous statement has the patina of Founding Father rhetoric to it, but, as Ralph Nader has pointed out, its effect is to serve the interests of the corporate world which Jaworski's huge Houston law firm so faithfully represents.

In his new job Jaworski is certainly an "unelected person" who should "represent, legally and politically, the interests of all the people." Will he? Can he? What will he do, or not do, when he runs up against powerful legislators, personally tainted by the Korean bribes, or determined to protect their friends who are contaminated, or simply the whole Congressional establishment set to guard the "good name" of that branch of government?

There can be no great confidence that Leon Jaworski is the man who will probe deeply in Congress and, after helping to bring about the punishment of the wrongdoers, contribute to the purging of the legislature of its corrupting influences, foreign and domestic.

The In-Hock Director

Speaking of ethics, it must be some comfort to the members of Congress embroiled in the Korean affair to look down Pennsylvania Avenue and observe the squirming of Bert Lance on a griddle of his own making. President Carter's old Georgia friend (and his personal banker before he was made this country's chief fiscal officer as director of the Office of Management and Budget) is having a very hot time indeed with his personal finances. It makes things no cooler for him that

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he must simultaneously try to separate those snarled affairs, in the minds of Congress and the public, from his official functions.

In the nick of time, on the very day that the Senate Government Affairs Committee was in effect reconfirming Lance (as against seriously questioning his banking habits), a rescuer rode to the rescue. An Atlanta investor who was willing to take Lance's bank stock off his hands at about the price he paid for it appeared out of the blue, and that aspect of the OMB director's credit problems seems to have been solved. The lack of rigor of the Senate committee's scrutiny of Lance's questionable bank transactions was clearly shown by Senator Chiles (D., Fla.), who said to him, "It's nice of you to drop by and prove [*sic*] your innocence."

To say that this go-go Georgia banker has woven a tangled web with his quite putative millions is not to say that "first he practiced to deceive," to paraphrase that famous line. To the contrary, he seems to have revealed more about his business affairs than was required by his boss's puritan guidelines and more than did any of his colleagues in the upper reaches of this administration.

It seems possible, given the odd balance between his enormous bank loans and the trembling assets on which they are based, that the prefix "ex" may soon have to be added to the conventional handle, "millionaire Georgia banker." But that is Lance's problem. The one that should concern the rest of us—starting, of course, with the President—has to do with the connection between the public and private aspects of Lance's complicated fortune.

There is no need (or space) to rehearse the intricate details of his situation with his creditors. It is enough to say that he is committed to pay $373,000 per year on his various bank loans and that his principal asset, the stock of the Atlanta bank he ran and substantially owned, has been in a steep decline since he left it to run an even larger enterprise. Hence his problems as a debtor. More than one big bank has been eager to help, in one case dubiously.

His problem as a public servant who would hang onto his good name arises mainly from his interest in the interest rates of banks, his own and others'. Lance the debtor should want a low prime rate. Lance the bank owner should want a high prime rate, to increase his profits. His personal interests here (apart from the public interest we will assume he cherishes and puts first) are in such conflict that they are in a stalemate—the director of the Office of Management and Budget has a self-interest on both sides of the prime interest rate issue. Heads he wins, tails he wins, or vice versa. Perhaps the whole question, and the disentanglement of Bert Lance, should be left to Arthur Burns, chairman of the Federal Reserve Board, who is, we are frequently assured, utterly nonpolitical.

Or perhaps President Carter should fire Bert Lance.

Notice to Our Readers

The Nation is publishing on its fortnightly summer schedule. The next issue will be dated August 20-27.

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People in the Dark

The electric power system of New York City was not the only thing that broke down on July 14. With it went the delicate social fabric that holds a city together and makes it possible for millions to live close by one another. But is it accurate or decent to blame the wave of looting that accompanied the power failure on the poor who did that stealing? In our opinion, it is not, especially when the blame is placed on them in a cruel and sensational way.

It should be remarked, first, that there was extraordinarily little violence in those dark hours. Less than a handful were killed, and the city's police behaved with exemplary restraint. That did not stop some, as inevitably happens, from calling the looters "animals." The city's newspapers generally kept their senses, except for *The New York Post*, now owned by an Australian press lord, which ridiculously called the looting the city's "worst riot" (forgetting, among other events of the turbulent past, the draft riots of 1863 when hundreds died). *Time* magazine joined the hysterics in a caption on a picture page in its July 25th issue which read, "So avaricious & determined are some pillagers that they scavenge the rubble in a Bronx supermarket burned by mobs."

What seems to have happened in that twenty-five hours of "outage," as Consolidated Edison daintily called its great failure, was that the miserably poor simply helped themselves to goods that are always near at hand but normally out of reach. These underclass victims of this society thus made victims of the middle-class people who were their suppliers, adding to the general burden of misery in the city. The looters (less than 4,000 arrested) and the much larger number of their law-abiding neighbors will be victimized by the consequent further decline in the bare amenities of their rank neighborhoods.

New York, as this country's largest city, is famously in deep trouble, itself the victim of the social dislocations of the nation in the past three decades. Roughly a million on relief, 500,000 jobs gone from the city in the last five years, 60 percent unemployment in Harlem, as its Congressman Rangel noted. The looters came from that stratum of the people that lacks all hope of a decent life. As for the fires that were set by the jobless youths (and which are set every day), they are by-products of the city's one growth industry, arson, a racket set up by landlords to collect insurance. The city is gnawing away at its own vitals, and the government at all levels is so slow to act.

Almost everyone knows that the systematic unemployment of New York is a national, not a local, problem. But almost nothing has been done to make relief a federal responsibility. President Carter, reflecting a week later on the "disaster" (though he has not officially declared it to be one), said some of the right things when he declared that the "deteriorating urban areas . . . have been neglected too long" and that "programs" should "channel" money for housing, health and jobs into them. But the note of urgency seemed to be missing; the same things have been said so often. The poor, especially, will remark the familiar gap between pieties and action.

Carter is taking a firm, no-nonsense line with the country's black leadership. When Vernon Jordan of the Urban League presumed to suggest that there was a gap between Carter's pledges as a candidate and performance as President, in regard to the impoverished victims of things as they are, Carter told the Urban League that he had "no apologies to make." He rejected Jordan's suggestion that he come to New York, where he might learn more about the true condition of the poor than he could in Yazoo City, Miss., and he apparently took Jordan aside and told him it was not helpful to the black cause to criticize the President. There is not much the black leadership can do to counter that kind of tough talk. And where else can they go for help?

As for the utility that failed again, Con Ed, it talks of the lightning that triggered the blackout as "an act of God," contributes $250,000 to a recovery fund (which will go on the consumer's rate base) and promises to study the matter deeply with a view to handling God's acts better next time. Con Ed is deeply entwined in politics, resists the safer but less profitable power interconnections in favor of building its own generators and the resulting return-on-capital rate base, and goes its own corrupt, complacent and profitable way, successfully resisting the public takeover that should happen.

The power blackout is a warning to the "system" in all senses and at all levels. But the victims of it have little reason to hope that the alarm will have any effect.

El Salvador Suppresses the Church

Penny Lernoux

Bogotá, Colombia—"It was like the Nazi witch hunts in Germany," said Spanish Jesuit Salvador Carranza of his recent expulsion from El Salvador.

Carranza, two other priests and three laymen were besieged by soldiers in the parish church of Aguilares, a tank at the very door, as the six men frantically rang the church bells for help from the villagers. The soldiers burst into the sanctuary, knocked the six men to the ground, stripped and blindfolded them, then tore the church apart, firing on the altar and scattering hosts everywhere. A picture of Father Rutilio Grande, assassinated by right-wing government supporters in March, was smashed and all the church windows were broken. Meanwhile, tanks and helicopters encircled the town of 30,000, cutting off communications.

"Operation Rutilio," as the May 25th siege of Aguilares was called, typifies the ongoing atrocities suffered by the Catholic Church in El Salvador—and many other Latin American countries—since 1968 when the church began to question the miserable conditions in which two-thirds of the continent's people live. Several hundred priests, nuns and bishops have been arrested, tortured, murdered or expelled, and thousands of Catholic laymen have been jailed or killed.

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"Nowadays it is dangerous and practically illegal to be an authentic Christian in Latin America," said Father Grande, a few days before he was gunned down along with a teenager and a 72-year-old peasant in Aguilares, a sugar-growing region 23 miles north of the capital, San Salvador. Two months later a second Salvadorian priest, Alfonso Navarro Oviedo, was shot dead in his home in a San Salvador suburb by a right-wing vigilante organization calling itself The White Warriors Union; a 14-year-old boy also died in the shooting. The Union subsequently threatenend to kill all forty-seven of El Salvador's Jesuits if they did not leave the country by July 20.

A microcosm of Latin America's social and economic problems, tiny El Salvador is torn between a mass of impoverished, land-hungry peasants and a rich minority of large estate owners. The latter have the uncompromising support of the military regime headed by President Carlos Humberto Romero, a right-wing general who built his "law and order" reputation on the massacre of peasants in Chinamequita and La Cayetana in 1974 and on his friendship with the Somoza dynasty in neighboring Nicaragua. Ranged against the landowners and the military is El Salvador's progressive Catholic Church, which has repeatedly denounced the imprisonment and murder of Salvadorian peasants.

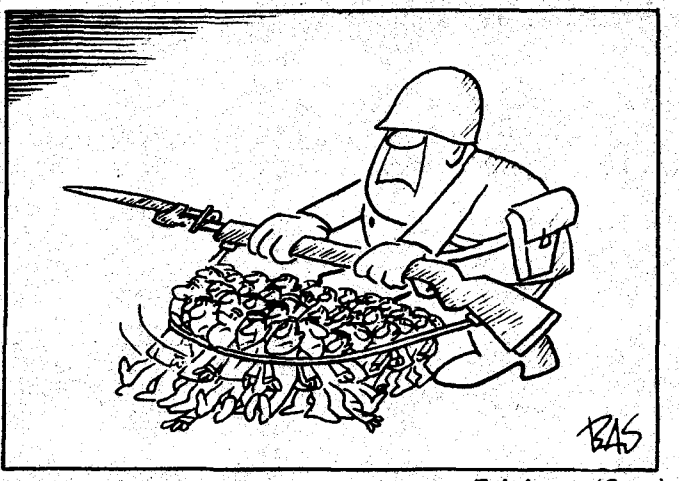
The most overcrowded, undernourished nation in Central America, El Salvador teems with 5 million people; 65 percent of them eke out a subsistence living as peons on the large sugar, coffee and cotton plantations or on tiny plots of 2.5 acres or less. Two percent of the population, in contrast, owns three-fifths of the arable land.

In response to pressures from the increasingly militant peasants, Romero's predecessor, Col. Arturo Armando Molina, decreed a mild agrarian reform in mid-1976. It was never put into effect because of opposition from the militant landowners' associations, FARO and ANEP, which look upon any encroachment on their privileges as "Communist subversion."

The Jesuits were singled out for reprisals after the Jesuit Catholic University in San Salvador declared its support for the agrarian reform. Priests like Salvador Carranza and Rutilio Grande were considered particularly dangerous because they worked with El Salvador's Christian peasants federation (FECCAS). Although the federation is nonpartisan and nonviolent, its mere existence is considered a threat. The large sugar planters in Aguilares received government support for their harassment, imprisonment and torture of FECCAS members. In February 1975, a group of students was jailed and tortured merely because they had organized literacy classes for the peasants.

Aguilares is not the only hot spot in El Salvador; there have been peasant uprisings and massacres by the military in several departments in the past year. In March several hundred people were gunned down in San Salvador during a peaceful demonstration protesting the fraudulent February elections that brought General Romero to power. There are many precedents for such atrocities, including the massacre of 30,000 peasants by Maximiliano Hernandez's government in 1932.

Led by San Salvador's Archbishop Oscar Romero, the church hierarchy has repeatedly denounced the persecution of religious and laity. In retaliation, government forces have arrested and tortured five Salvadorian priests, expelled nine foreign priests and refused seven others re-entry into the country. The Jesuit University was bombed six times, and the Archdiocesan printing press, which published the only opposition newspaper in the country, was destroyed. Anonymous pamphlets have been circulated urging Salvadorians, "Be patriotic. Kill a priest!"



Tachydromos (Greece)

El Salvador

However neither threats nor violence have deterred the Salvadorian Church from its mission as "the voice of the voiceless," and not one of the forty-seven Jesuits on the White Warriors' assassination list has left the country. In response to this commitment, the Salvadorian people have repeatedly come to the aid of their priests, often at the risk of their lives. Father Grande's funeral was attended by more than 100,000 people, the largest gathering in the country's history.

"The church does not fear misunderstanding or persecution," stated the bishops in a March pastoral letter warning the government that they will not be "silent or resigned to a passive acceptance of these recurrent deplorable events." The bishops said they would betray their mission if "evangelization were reduced to a mere practice of individual piety and spiritual sacramentalism."

This attitude contrasts sharply with the other-worldly view of Marcel Lefebvre, France's rebel bishop, currently on tour of Latin America. Lefebvre, who broke with Rome over the liturgical and institutional reforms of the Second Vatican Council, would seem to be a natural ally of the right-wing military regimes ruling two-thirds of the Latin American population. Like Romero's administration in El Salvador, most of these governments have crossed swords with the Catholic Church over the issue of human rights and would like nothing better than to see the church retreat to the "spiritual sanctuary" advocated by Lefebvre.

Whatever their local differences with the hierarchy, however, none of the Latin American governments appears eager to clash with the Vatican, and Lefebvre has either been denied entry, as occurred in Mexico, or

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reluctantly welcomed. After a brief visit to Colombia, where Cardinal Anibal Muñoz Duque declared him persona non grata, Lefebvre journeyed to Argentina, apparently in the belief that the Videla military regime, which he has warmly praised, would be delighted to receive such a staunch supporter, particularly since the Argentine Catholic hierarchy has been so critical of the military's violation of human rights. But the Videla government was not at all pleased to see Lefebvre, and even prevented the prelate from celebrating mass publicly, presumably on the theory that it is better to deal with "the devil you know." □

BEGIN IN MIDDLE EAST PERSPECTIVE

NEW FACTOR IN AN OLD EQUATION

IRENE L. GENDZIER

Despite the optimistic declarations after their meeting it is realistic to assume that Prime Minister Begin and President Carter have not resolved their differences. Yet to speak of a "confrontation" between the United States and Israel distorts the nature of their relationship and their respective visions of the Middle East. There are, of course, differences between Begin's conception of peace and President Carter's new look for the Middle East; this appears to be particularly true with respect to the Palestinian question. But on closer inspection these differences must be judged as superficial, and the notion of an impending U.S.-Israeli showdown seems false from the start.

That relations between the two countries could not be fundamentally altered by the emergence of the right-wing government of Menahem Begin was to be expected. They were built on a convergence of long-term interests that cannot be seriously challenged by erratic changes in Israeli politics. Presidential adviser Brzezinski said as much in an exclusive interview with *The Jewish Advocate* (July 7) when he reiterated that "the fundamental nature of the United States-Israeli relationship was not affected" by the election of Begin. Nor did Brzezinski anticipate that Begin's victory would in any way seriously affect the movement toward "conditions for meaningful negotiations between the parties concerned. . . ." If President Carter and Vice President Mondale nevertheless felt it necessary to reassure the Zionist establishment in the United States about the administration's commitment to Israel, that is but an indication of the occasional inability of the Zionist lobby to appreciate the full dimension of U.S.-Israeli relations.

To be sure, when the need for optimistic declarations has passed, it will be possible to publicize the discomfort caused by the Prime Minister's blunt inflexibility on the West Bank and the Palestinians, and it may even prove advantageous to do so. But is there any substantive evidence of U.S. policy or pressure on Israel, within the last ten years, to adopt a different approach on either the Palestinian question or the matter of settling occupied territory? That there are experts among Carter's advisers who advocate such positions is certain, but when forced to think in terms of the broader interests of the United States, it is clear that their doubts will be more than canceled out by the demands of American policy in the region. In the short run it is useful to recall that, despite Prime Minister Begin's alleged moderation with respect to those territories he deems open to negotiation, namely the Golan and the Sinai, plans for settlement suggest a different reality. It is estimated that over the next four years twenty-seven settlements in occupied territory will be established; eleven to be in the West Bank, fourteen in the Gaza Strip and in the northeast of Sinai, and two on the coast of the Gulf of Aqaba. In addition, four new settlements are foreseen in the Golan over the next few years. (*Le Monde Diplomatique*, June 1977 and in *Ha'aretz*, July 3.)

The Israeli peace plan, secret until the recent meetings with President Carter, in fact summed up Foreign Minister Dayan's thinking on the question, which has not been secret. He stated his ideas for the West Bank after 1967 and they have not fundamentally changed. Though willing to grant a measure of autonomy to West Bankers under Jordanian administration, he, like ex-Minister Allon, has never thought of abandoning Israel's military control of the region. Less given to mystical expressions than the new Prime Minister, and less single-minded in his political commitments, Dayan does remain committed to the view that conflict with the Palestinians is inevitable. Thus he sees a solution that involves recognition of Palestinian self-determination as both unnecessary and impracticable.

To what extent does this hard-line position conflict or coincide with the American stand on the Palestinian issue? To move from a policy of silence about the Palestinians to one in which the Palestinians are admitted to be a factor in the Arab-Israeli crisis, is certainly "progress." And the Brookings Institution report, "Toward Peace in the Middle East," which has been cited as a source of President Carter's thinking on the subject, readily acknowledges that the Palestinian question is critical to the overall solution of the Arab-Israeli problem. Brzezinski, who incidentally was a member of the Brookings Study Group, described the American position in his *Jewish Advocate* interview as follows: "We want to resolve the issue of the Palestinians in such a

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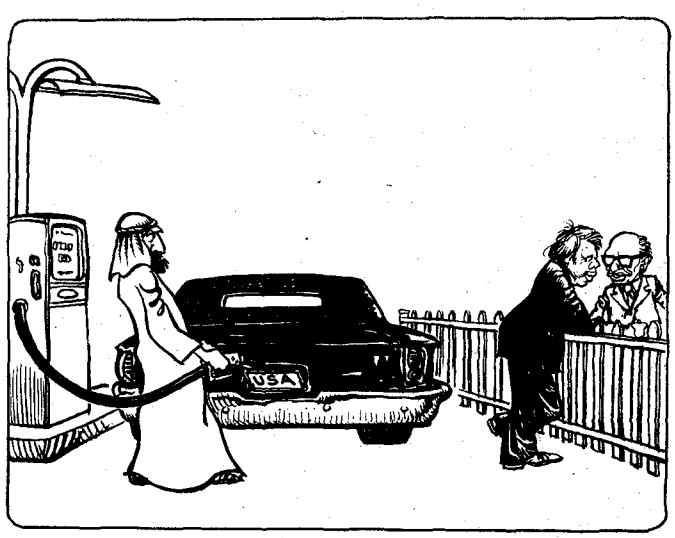
way that they don't become a political force dedicated to increasingly effective efforts to threaten Israel. Therefore, they have to have some sort of an arrangement within which they can feel at home. It would be more stable and more acceptable if such an arrangement were related in some fashion to the Kingdom of Jordan." Such a link is precisely what the Israelis have indicated that they will tolerate, though not in the form of a separate Palestinian state. But the United States has not formally advocated such a state. The Brookings report noted that Palestinian self-determination might be implemented either by the creation of "an independent Palestinian state accepting the obligations and commitments of the peace agreements" or, as an alternative, "a Palestine entity voluntarily federated with Jordan but exercising the extensive political autonomy King Hussein has offered." The report was issued in 1975. Since then, although U.S. administrations have speculated on the role of the Palestinians in the Middle East crisis, a policy of nonrecognition of the PLO continues to dominate American practice.

It is worth emphasizing the point—because commentators and politicians tend to claim its opposite—that the coincidence of American and Israeli policies is not the result of moral or sentimental commitments on the part of the United States toward Israel, but reflects a convergence of interests between the two governments. This is as true on the matter of the Palestinians as it is on broader issues pertaining to the Middle East as a whole. And while Prime Minister Begin's style and his political past may prove momentarily embarrassing to President Carter, and for different reasons to American supporters of Israel, the policies of the two governments suggest a mutuality of interests whatever the immediate differences. One has only to consider Israeli support for the right-wing forces in Lebanon, a support that is increasingly overt and that continues to the present time, to see this in operation. Israel's backing of the Phalangists in their campaign against the Palestinians and the Lebanese National Movement has not gone unnoticed. To this day training of right-wing forces and threats against Palestinians in the Lebanese south go virtually unchallenged either by the Lebanese Government or by those foreign governments interested in the Lebanese situation. This includes the United States, which has not, publicly at least, pressured the Israelis to desist from such policies. If the objective is to weaken the PLO and to dismantle its alliance with the Lebanese Left, it is a policy that appears to have the support not only of Israel but of the Lebanese Government, the Syrian Government and the Arab peace-keeping forces of the Arab League which, despite their differences, are all counting on the American "peace initiative."

When one broods over President Carter's declarations on the subject of the Palestinian homeland, or the possible irritation caused by Prime Minister Begin's bluntness on the Palestinian issue, it is useful to bear this larger perspective in mind. American expression of concern for the creation of a Palestinian homeland—whatever that may actually mean—is dictated by American interests which are threatened by the subversive role the PLO has come to assume in the Middle East since 1967. From this viewpoint, the Lebanese war offered an opportunity, however tragic its consequences, to reduce the political power of the PLO within the Middle East. That Israel's interests coincided with this position is borne out by its support of the Lebanese Right in *its* campaign against the Palestinians.

"Confrontation," then, is a clearly inappropriate term for the tensions which Prime Minister Begin's policies may produce in U.S.-Israeli relations. What is more difficult to fathom in the Middle East puzzle is the precise situation of the Arab "confrontation" states—Egypt, Syria, Lebanon and Jordan. Cornered by Begin's bluntness, the Presidents of Syria and Egypt have sharply rejected Begin's proposals. But this rejection, whatever the intensity of its expression, reflects the bind in which these states find themselves. Begin has revealed the kind of Israel which the United States is willing to support. It has become plain that President Sadat of Egypt gambled his reputation as the first Arab leader to be prepared to reach an accommodation with Israel on the ability of the United States to force Israel into concessions on the occupied territories and on the Palestinians. In the process, he has come to expect American economic and military aid to deal with his staggering internal problems, and he has promoted a "liberalization" of the economy designed to attract foreign capital that has been slow to arrive. So far, however, his bet has not paid off, as the evidence of internal crises sharpened by acute economic problems reveals. Nor has he been able to demonstrate his successful influence on the American administration vis-à-vis Israel, with the result that the credibility of his policy is now very much at stake.

The government of President Assad of Syria, once vilified as the worst of Israel's enemies, has now also indicated its preparedness to move into the American camp. From the period of discreet and limited cooperation during the Lebanese civil war to the more euphoric encounter with President Carter in Geneva, the Syrian Government has in fact followed in the wake of the Egyptians, with minor differences caused by Syrian politics and Syrian-Soviet relations. It need not be emphasized that King Hussein of Jordan, as the revelations of his collaboration with the CIA so graphically demonstrated,



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has long been a dependable ally of the United States in the area. Now, with Lebanon in a state of shambles, and with a peace-keeping force largely financed by Saudi Arabia, another notable ally of the United States in the region, it appears that the Arab confrontation states and their Saudi partner and financial backer have accepted their roles as American allies, hoping only for more effective American aid to materialize as rapidly as possible. But is the assumption of the Arab states—that they can influence American policy toward Israel—justified? The resolve of the United States and Israel to forge ahead in their common interest—predictable, given all that has preceded in the troubled history of the region—suggests the insubstantial nature of that assumption. Moreover, those Arab governments that have come to rely on the United States to solve their problems, the Arab-Israeli crisis among them, must accept the consequences of their position. In other words, they must accede to the American-Israeli connection, with its implications for the Palestinian question. This may not be as removed from their own policies as public declarations now suggest.

From this vantage point, a future Geneva conference is less promising than some would have us believe, and its possible delay would not, in itself, provoke another Middle East war. War looms as a possibility in the Middle East because so many internal conflicts are unresolved and because they cannot be neatly contained within the boundaries of any single state. Geneva has become the symbol of the attempt to deal with at least one of these problems, the Arab-Israeli crisis, but it is evident that the guidelines followed by the Arab regimes intent on going to Geneva leave even the Arab aspect of that crisis far from resolved. Whether Geneva does or does not take place will make a difference, but the eagerness generated by its prospects must not blind us to the overall situation in the Middle East. □

SCHLESINGER AND KENNEDY

Historian in the Service of Power

RONALD RADOSH

American historians spend too much time writing about events which the whole nature of their lives prevent them from understanding. Their life is defined by universities, libraries and seminars. . . . I gained more insight into history from being in the war and working for the government than I did from my academic training.

—Arthur M. Schlesinger Jr.
(Interview in *The New York Times Book Review*, September 18, 1949)

Mr. Schlesinger's statement ignores the tension that regularly occurs when scholars offer their services to the state. In her excellent study of this conflict, *Mars and Minerva: World War I and the Uses of the Higher Learning in America*, Carol S. Gruber comments that the ideal of service might have led in a different direction, "had a distinction been made between service to society and service to the state, and had scholars recognized that they could service society best as free and independent thinkers, who . . . exercised the function of social analysis and criticism. Instead, professors assumed that knowledge is effective chiefly in association with power, and they ultimately came to serve the interests of power rather than the interests of truth." Having made that assumption, intellectuals were put in the position of obeying priorities that "fettered their critical intelligence and warped their judgment," with the result, Dr. Gruber writes, that the work they produced in service of the state "seriously departed from responsible scholarship."

Dr. Gruber's comments pertain at least as well to our own day and time as to the epoch of World War I. Newly released documents distributed nationally by the Declassified Documents Reference System of Arlington, Va., allow us to explore the manner in which power was served by historian Arthur M. Schlesinger Jr., in the days immediately preceding the Bay of Pigs invasion. Mr. Schlesinger is a most appropriate subject, since he candidly described himself, in an April 1961 interview with journalist Irwin Ross, as a "court philosopher." Many scholars see this as a strength. Thus historian Arthur Mann, appraising the Progressive tradition in historical writing (in John Higham's *The Reconstruction of American History*), states that "Professor Schlesinger writes history as he votes and votes as he writes. To a spectatorial age his ardent commitment to a cause has been a salutary countervailing tendency," and his narrative history is that of "the grand style, written from the inside, with life, color, passion, drama and conviction."

Few would deny that Mr. Schlesinger's writing reveals these qualities, and it is only upon careful investigation that the problems of such an approach become clear. In service of government, Mr. Schlesinger has readily admitted, he was willing to lie—offer cover stories—on behalf of national policy. Having agreed to work in the Kennedy administration, he had no alternative, other than resignation, but to help the new administration in the cover-up and security surrounding the preparations for the Bay of Pigs. The administration obviously thought it acceptable to lie "in the national interest," and Mr. Schlesinger obviously did not disagree. On November 25, 1965, Schlesinger told *The New York Times* that, before the invasion, he had fed them a phony cover story about the nature and size of the Cuban exile landing. There was a landing force of only 200 to 400 men, he had briefed the press, and they were trying only to bring

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supplies to the anti-Castro Cuban underground. "I was lying," Mr. Schlesinger said. "This was the cover story."

While Mr. Schlesinger apologized to the *Times* for his role, he was unrepentant. "If I was reprehensible in misleading the *Times* by repeating the official cover story," he later stated, ". . . I, at least, had the excuse that I was working for the government." And even if lying to the press was a mistake, Schlesinger maintained that the stated cover story was offered "in the national interest." (Quoted by Clifton Daniel in his June 1, 1966 speech to the World Press Institute, *The New York Times*, June 2, 1966.)

One may reply that Schlesinger showed little awareness that the scheduled invasion itself may not have been in the true national interest; that it was not only a violation of international treaty relations governing the Western Hemisphere, as well as our own neutrality laws, but was, as William Appleman Williams put it in his early book, *The United States, Cuba, and Castro*, "likewise a callous negation of avowed American principles by President John Fitzgerald Kennedy (who was fond of using the rhetoric of idealism)."

Indeed, Mr. Schlesinger's first activity in preparation for the invasion was to prepare an intellectual justification for the action, a governmental White Paper that presented the administration's case: Fidel Castro and the Cuban revolutionary leaders had "betrayed their own revolution," having turned Cuba over both to Moscow and to Cuba's domestic Communists. The White Paper conceded what it called "past omissions and errors in our relationship" to Cuba; indeed, it argued that "the character of the Batista regime in Cuba made a violent popular reaction almost inevitable." But, as Mr. Schlesinger later wrote in *A Thousand Days*, his account of the Kennedy administration, "the year 1959 saw the clear commitment of Castro's revolution to the establishment of a Marxist dictatorship in Cuba and the service of Soviet foreign policy in the world—a commitment so incompatible with the expressed purpose of the revolution as surely to justify the word betrayal."

Castro, of course, had not betrayed Cuba and its people. He may have betrayed the type of revolution which the Kennedy liberals would have preferred, but not the revolution that did take place. Precisely because Castro presided over a social revolution, the American Goliath responded, as Castro had suspected it would, with the active use of both economic and political warfare meant to weaken and topple the new regime. If there is any doubt that the White Paper was designed specifically to rationalize the scheduled invasion, one of the documents defines its purpose. A Top Secret National Security Action Memorandum No. 31, dated March 11, 1961, and signed by McGeorge Bundy, reads in part that "every effort should be made to assist patriotic Cubans in forming a new and strong political organization, and in conjunction with this effort a maximum amount of publicity buildup should be sought for the emerging leaders of this organization, especially those who may be active participants in a military campaign of liberation. Action: Central Intelligence Agency." Bundy's second point in the memorandum reads: "The United States Government must have ready a white paper on Cuba, and should also be ready to give appropriate assistance to Cuban patriots in a similar effort. Action: Arthur Schlesinger, in cooperation with the Department of State." The memorandum closes with Bundy's notation that the President "expects to authorize U.S. support for an appropriate number of patriotic Cubans to return to their homeland."

A major problem faced by the administration was how to handle the press. Months after the failed invasion, Kennedy told *Times* managing editor Turner Catledge: "If you had printed more about the operation you would have saved us from a colossal mistake." At the time, however, his concern was the opposite: how to keep the press from just such a task. Schlesinger deals with this in *A Thousand Days*. He tells how the President acted to censor a piece written for *The New Republic*, "a careful, accurate and devastating account of CIA activities among the refugees." Schlesinger wrote that he "handed the article to the President, who instantly read it and expressed the hope that it could be stopped." Gilbert Harrison, then editor and publisher of *The New Republic*, did not run it—"a patriotic act," Schlesinger writes, "which left me oddly uncomfortable."

The New York Times was a more important organ to deal with. On April 7, the paper ran a censored version of a dispatch by Tad Szulc; it had been changed to eliminate references that indicated an invasion was imminent, revealed the CIA's role in its preparation, or mentioned that the first air strike in Cuba had been carried out from bases in Guatemala. James Reston's advice to eliminate those sections of the Szulc piece, Schlesinger wrote, was another "patriotic act" which in retrospect led him to wonder, "if the press had behaved irresponsibly, it would not have spared the country a disaster." The ironic tone suggests again that he was made uneasy by this press manipulation.

However, the newly released documents indicate that at the time when these events were unfolding Schlesinger was quite wrapped up in the tasks assigned him. In one memo, he proposed that newspapermen with solid "liberal" credentials be used to bolster the image of the newly created Cuban Revolutionary Council, the CIA-sponsored shadow government that the administration hoped would replace Castro. In a March 20th memo, Schlesinger suggested "that some liberal newspaperman, like Arnold Beichmann, be put in charge of [the council's] public relations. Everything possible ought to be done in the next few weeks to build up the status and dignity of the Government-in-exile as a functioning organization." And he noted that he and Asst. Secy. of State Thomas Mann felt that the White Paper's publication should be delayed in order that it "not come on the heels of the Government-in-exile."

Tad Szulc in particular proved troublesome. Schlesinger informed Kennedy in a letter of April 7 that it was "unfortunate" but the administration had "very little to argue about" with his *Times* story. Schlesinger had rechecked details, he told the President, and aside from

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some inaccuracies about where the training was being carried out, it was "not altogether wrong in its facts; enough training had gone on in the United States to justify the statement," although Szulc had not distinguished between camps set up by the Cuban exiles on their own and those set up by the CIA. He also noted that Szulc was correct about a base in Louisiana and one in the Florida Keys, as well as his claim that jungle warfare instruction was being carried out in Florida and Panama. "We do not have a strong case against the story as inaccurate."

Schlesinger's memo gives no suggestion that he was "oddly uncomfortable" with the role he was playing. Indeed, he goes on to report to the President that Wallace Carroll, the *Times*'s Washington bureau chief, had told him that the Szulc story "was 'disinfected' somewhat before publication," as well as that Szulc was filing yet another story about training in the Florida camps. Whereupon Schlesinger instructed Carroll as to what should appear in that story: "I stressed to Carroll that, while training of some sort has no doubt gone on in Florida camps, this has all been strictly Cuban private initiative, and that this point should be emphasized in the stories." The idea, of course, was to lead the public away from knowledge of the crucial CIA involvement.

But what did Schlesinger advise on the merits of the Bay of Pigs plan itself? In the section of *A Thousand Days* titled "A Personal Note," Schlesinger describes himself as an opponent of the plan, albeit on tactical, rather than moral grounds. It was clear to him in 1961, he writes, "that the invasion was a terrible idea." His opposition was based on the "implausibility" of two premises: that if none but Cubans took part, "the United States could dissociate itself from the consequences"; and that, if the beachhead could be held for a few days and then enlarged, "there would be defections from the militia and uprisings behind the lines." At this point in the book, Schlesinger also mentions two memoranda he presented to the President, one of which, he writes, concentrated on "proposing ways to counter the Communist political attack" which he expected would be launched in response to the invasion.

Envisioning the reader's own questions as to why he did not speak forthrightly against the plan, Schlesinger writes that, although in the months to come "I bitterly reproached myself for having kept so silent during those crucial discussions in the Cabinet room," it was one thing to talk privately to the President "and another for a college professor, fresh to the government, to interpose his unassisted judgment in open meeting against that of such august figures as the Secretaries of State and Defense and the Joint Chiefs of Staff. . . ." Schlesinger also writes of the post-mortem held after the invasion's failure, when Kennedy chose to accept total responsibility for the invasion. When the President remarked: "There is only one person in the clear—that's Bill Fulbright," Schlesinger writes: "Bundy reminded him that I had opposed the expedition. 'Oh sure,' he said. 'Arthur wrote me a memorandum that will look pretty good when he gets around to writing his book on my administration.' "

At an earlier point in his account, Schlesinger himself claims that "these memoranda look nice on the record." But although he summarizes portions of them, and even quotes selectively from them, nowhere in *A Thousand Days* does he offer readers a complete look at either memorandum. Now one of these documents, a 9-page, thirteen-point memo written by Schlesinger on April 10, 1961, titled "Cuba, Political, Diplomatic and Economic Problems," has finally been made available for thorough examination. It makes available the major arguments offered the President by the historian in residence at the White House, and permits one to check its contents with the summation offered in *A Thousand Days*.

The main thrust of this private communication was not to oppose the invasion but to help the President orchestrate a cover-up in case of failure. The memorandum reveals that, in the account offered in *A Thousand Days*, historian Schlesinger remained less than candid about his own participation in these events, long after evasions of the truth could be justified by citing the interests of national security.

The memorandum of April 10 is concerned primarily with making adequate preparations for the invasion's aftereffects—Schlesinger writes the President that "we run the risk that a successful military result may be to a considerable degree nullified by seriously adverse results in the political, diplomatic and economic areas." He pointed to what he saw as clear areas of American vulnerability:

> In the first place, however "Cuban" the operation will seem to be, the U.S. will be held accountable for it before the bar of world opinion; our own press has seen to that. Beyond this, here is an obstinate fact: *A great many people simply do not at this moment see that Cuba presents so grave and compelling a threat to our national security as to justify a course of action which much of the world will interpret as calculated aggression against a small nation in defiance of both treaty obligations and of the international standards we have repeatedly asserted against the Communist world.* . . . Given the mythology of our relationship to Latin America, they will assume that we are acting not to protect our safety, but to protect our property and investments. In short, for many people the easiest explanation of our action will be as a reversion to economic imperialism of the pre-World War I, Platt Amendment, big-stick, gun-boat diplomacy kind.

Calling Russia to task for acting in a similar fashion, Schlesinger continues, is irrelevant, "since we profess to be acting according to higher motives and higher principles than the Russians." Schlesinger is concerned since the tone of the memorandum suggests that he respects the argument of those who were skeptical. He stresses that "the people who fail to understand the pressing necessity" for the invasion include J. William Fulbright. But unless countermeasures were put into effect, Schlesinger warned, many people would "see a vast gap between what they regard as the minor threat presented by a tiny nation of 7 million to the great United States and the massive response (i.e., the instigation of civil war and the overthrow of the government) proposed by the United States." His words suggest that Schlesinger evidently did know which power was Goliath and which was David.

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But his concern was that the invasion would "jeopardize the new 'image' of the United States" which he assumed Kennedy had already established.

Schlesinger then informed the President—and these points from the memorandum are summarized in *A Thousand Days*—of how the "USSR will exploit the situation," stating that the Soviets will try to "nail down the already existing impression that such a landing is sponsored by the U.S." They would be able to argue that point, he writes, because "the Communists have already had the indispensable assistance of the American press," and they could make out their "case almost entirely by quotations from U.S. sources." Because of the journalists' exposés, the world would assume the invasion "is American in its conception and in preparation" (which indeed it was). The Russians would then be able to portray the assault as "an effort on the part of the great capitalist nation to punish a small country for its desire to achieve political and economic independence."

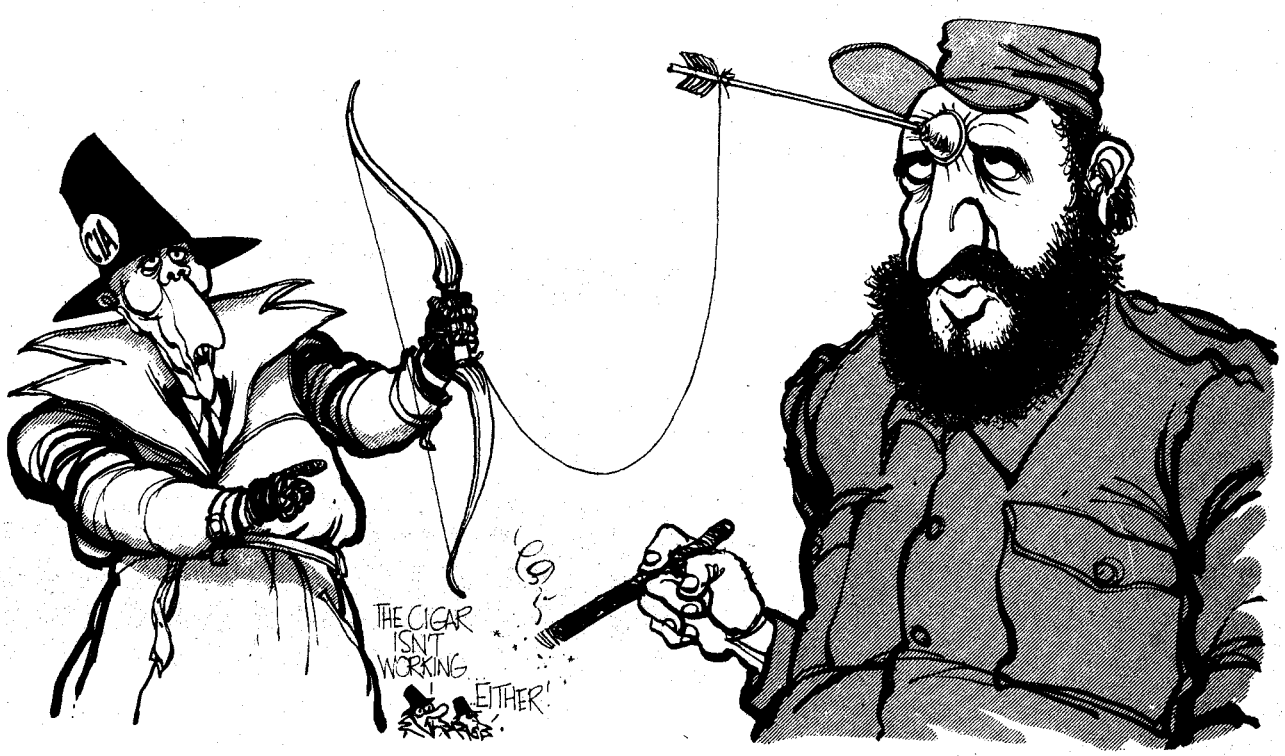
Schlesinger warns of possible direct results. There would be riots and demonstrations, attacks on American embassies, renewed anti-Americanism throughout Europe, and new support abroad for Castro. There might even be the formation of José Martí and Abraham Lincoln Brigades to fight alongside Fidel in Cuba; a new Spanish Civil War "made to order for Soviet exploitation." Such a stratagem, he wrote, could not be permitted to succeed. The United States had to hold up its somewhat tarnished image of "a mature and liberal nation, opposed to imperialism and colonialism and dedicated to justice, peace and freedom." That was indeed a problem, given that the United States was about to embark upon a venture that would present the world with a quite different American posture.

To deal with the problem, Schlesinger noted that the American position would be offered in the United Nations by Ambassador Adlai Stevenson (this turned out to be the famous speech in which Stevenson, unaware of the planned CIA action, was caught transmitting a lie). Schlesinger had met with the Ambassador two days before he wrote his memorandum, and he informed the President that the "essential elements" of Stevenson's speech would be "(*a*) that Castro is threatened, not by Americans but by Cubans justly indignant over his betrayal of his own revolution; (*b*) that we sympathize with these patriotic Cubans, and (*c*) that there will be no American participation in any military aggression against Castro's Cuba."

At this point in the memorandum Schlesinger runs into trouble. Given the U-2 fiasco during the Eisenhower administration, he was aware that the United States might get caught in its lies. He therefore advised a way out of the problem:

> If our representatives cannot evade in debate the question whether the CIA has actually helped the Cuban rebels, they will presumably be obliged, in the traditional, pre-U-2 manner, to deny any such CIA activity. (If Castro flies a group of captured Cubans to New York to testify that they were organized and trained by CIA, we will have to be prepared to show that the alleged CIA personnel were errant idealists or soldiers-of-fortune working on their own.)

In other words, sacrifice the CIA officials in charge to maintain the cover of American nonintervention. Schlesinger also suggests that "A Committee for a Free Cuba" be formed, "with impressive liberal names to backstop the Revolutionary Council and offset the Fair Play for Cuba Committee." He also recommends "diversionary measures," i.e., "Could not something be done against the Dominican Republic in the next few days?—some



Oliphant, Washington Star

"Er . . . It's Supposed to Suck Your Brains Out, and Then I Take Them Back to Washington, and . . ."

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new call for action against the Trujillo tyranny?" Such a call would reassert the Kennedy liberals' dissatisfaction with right-wing regimes and show their commitment to orderly change. It is in his tenth point, however, that Schlesinger raises the vital issue of responsibility for the invasion.

The following passage appears in *A Thousand Days* (p. 239):

> . . . a course of bullying intervention would destroy the new image of the United States . . . the operation might recklessly expend one of our greatest national assets—John F. Kennedy himself. Nothing had been more depressing in the whole series of meetings than to watch a collection of officials, some of them holdovers from the previous administration, contentedly prepare to sacrifice the world's growing faith in the new American President in order to defend interests and pursue objectives of their own. Dean Rusk was almost alone in recognizing this problem; but his solution was the curious one of suggesting that someone other than the President make the final decision and do so in his absence—someone who could be sacrificed if things went wrong.

The Schlesinger memorandum to Kennedy offers a different version:

> *10. Protection of the President.* The character and repute of President Kennedy constitute one of our greatest national resources. Nothing should be done to jeopardize this invaluable asset. When lies must be told, they should be told by subordinate officials. *At no point should the President be asked to lend himself to the cover operation.* For this reason, there seems to be merit in Secretary Rusk's suggestion that someone other than the President make the final decision and do so in his absence—someone whose head can later be placed on the block if things go terribly wrong.

Schlesinger, so it appears, was actually endorsing and strongly supporting the Rusk solution which in his book he describes simply as "curious." Schlesinger then turns to drawing up prospective questions that President Kennedy might expect to field during forthcoming press conferences:

> *Q.* Mr. President, can you tell us about the reported invasion of Cuba this morning?
>
> *A.* We are doing our best to get the exact facts. So far as I can tell at present, a number of opponents of the Castro regime have landed on Cuba. I understand that the Revolutionary Council is trying to make contact with these people.
>
> *Q.* Sir, according to the newspapers, the rebel forces were trained in American camps and supplied by American agencies.
>
> *A.* There have been many thousands of Cuban refugees in Florida these last months. I have no doubt that many of them have been determined to do what they can at the earliest possible moment to restore freedom to their homeland. They have the sympathy of American citizens in this effort—just as the forces of Castro enjoyed similar sympathy three years ago when they were conducting their rebellion against Batista. I suppose that, just as the Castro forces got money and arms from sources in the United States, these new rebels may well have too. But, so far as I can tell, this is a purely Cuban operation. I doubt whether Cuban patriots in exile would have to be stimulated and organized by the United States in order to persuade them to liberate their nation from a Communist dictator.

The problem, as Schlesinger realized, was that the invasion *was not* a purely Cuban operation. Yet the President was being advised to make it appear to be just that. The mock questions continued:

> *Q.* Mr. President, is CIA involved in this affair?
>
> *A.* As I said a moment ago, I imagine that elements in the United States helped these opponents of Castro, as they helped Castro himself in 1958. I can assure you that the United States Government has no intention of using force to overthrow the Castro regime or of contributing force for that purpose unless compelled to do so in the interests of self-defense. [Hardly satisfactory: it is imperative that a better formula be worked out before your next press conference.]

As Schlesinger acknowledged, his attempt to forearm Kennedy was not very convincing. The question of CIA involvement, if anyone were to press it, could not be evaded; it had to be truthfully admitted or falsely denied. Moreover, whatever help Castro obtained from within the United States in 1958 did not come from official Washington or from the CIA. Fortunately for Kennedy, his next press conference on April 12, 1961, took place before the invasion. However, his answers show that he did act on Schlesinger's plea for a better formula. The following exchange occurred:

> *Question*: Has a decision been reached on how far this country will go in helping an anti-Castro uprising or invasion of Cuba?
>
> *The President*: First, I want to say that there will not be, under any conditions, an intervention in Cuba by the United States armed forces. This government will do everything it possibly can, I think it can meet its responsibilities, to make sure that there are no Americans involved in any actions inside Cuba. . . .
>
> The basic issue in Cuba is not one between the United States and Cuba. It is between the Cubans themselves. I intend to see that we adhere to that principle and as I understand it this administration's attitude is so understood by the anti-Castro exiles from Cuba in this country.

Kennedy begged the question by reiterating that an American intervention would not take place because the regular American military was not being called to action in Cuba. Even in his post-invasion speech to the Society of Newspaper Editors on April 20, Kennedy emphasized that "this was a struggle of Cuban patriots against a Cuban dictator," and that while the United States did not hide its sympathies, "we made it repeatedly clear that the armed forces of this country would not intervene in any way." This was an assertion that the American planned invasion, in which Cuban exiles were recruited, trained and supplied by the CIA, was not an American intervention. And the exiles not only used American military equipment, they were led by American CIA agents and some of them, including American frogmen, landed with the Cuban exiles at the Bay of Pigs.

When Schlesinger developed his last mock question for the President, his imagination failed him:

> *Q.* Mr. President, would you say that, so far as

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Cuba is concerned, the U.S. has been faithful to its treaty pledges against intervention in other countries? Would you say that it has resolutely enforced the laws forbidding the use of U.S. territory to prepare revolutionary action against another state?

A. ? ? ? ?

At that point in the memorandum, Schlesinger moved on to warn against direct American military involvement. If U.S. prestige became committed to the invasion's success, he warned, "then our intervention will become blatant and obvious and the political consequences almost irreparable." To Schlesinger, the less blatant type of intervention seemed preferable. He therefore noted the need to convince the Cuban exile leaders that "in no foreseeable circumstances will we send in U.S. troops"; that recognition of the Provisional Government established by the Revolutionary Council would come only "when they have a better than 50-50 chance of winning under their own steam"; a problem since he acknowledged that the "exiles expect recognition as soon as they land in Cuba."

Schlesinger was concerned with yet another problem. He stressed that the overthrow of Castro could not be followed with a Cuban Government that sought to restore the discredited Batista regime. The American-backed counterrevolution would be for a liberal capitalist Cuba. Cuba without Castro could not devote "its first attention to owners of expropriated properties and to foreign investors." If it did so and also kicked ordinary people off the beaches and turned back the clock, it would only give credence to the Soviet view that the invasion's motive "was to make Cuba safe again for American capitalism." The Revolutionary Council—the self-proclaimed leaders of the new Cuban Government in exile—did not understand this, Schlesinger wrote, and they had done little "to reassure the lower classes that the social and economic gains of the Castro period will not be reversed."

Some might find Schlesinger's concern ironic. As the United States was preparing to institute counterrevolutionary action against the only Cuban Government in decades that had moved the clock forward, Schlesinger was expressing the hope that the planned counterrevolution show concern for the Cuban lower classes. However, his uneasiness was understandable. The Revolutionary Council had stated in its declaration of March 22: "We emphatically assure those who have been unjustly dispossessed that all their assets shall be returned." And the left wing of the council, headed by Manuel Ray, was left in the lurch by the CIA and not even notified when the invasion took place. The CIA's chosen officers for the Bay of Pigs landing were those of the Cuban exile right wing, and included notorious *Batistianos*. Schlesinger did well to worry—the CIA had made sure that its invasion force was free of any taint of liberalism.

To guard against the direction set for a new Cuba by these exile right wingers, Schlesinger suggested that the United States appoint a new liberal Ambassador to the post-Castro government, *"a man sufficiently astute, aggressive and influential,"* who would *"make sure that the new regime gets off on a socially progressive track."*

The irony of his own comments escaped Schlesinger, the astute historian. Fidel Castro had led a social revolution that for the first time had put Cuba into the hands of Cubans. (Schlesinger, of course, was then arguing that Castro had put Cuba into Russian hands.) But to Schlesinger, the new liberal Cuba could get on the right track only under American direction—since the Cuban CIA-trained exiles could not be depended upon. (The lower classes for which Schlesinger showed concern were obviously giving their support to Castro.) During his election campaign, Kennedy had given a standard speech that included many variants of the following statement: "I visited Havana three years ago and I was informed that the American Ambassador was the second most influential man in Cuba. He is not today. . . . This is the problem that we face in 1960." Schlesinger would have remedied that by once again having the Ambassador restored to what he saw as his proper role of leadership. American economists, he continued, would develop relief and reconstruction programs to back up the new regime, offering precisely the type of aid the Kennedy administration withheld from Castro. And once more, Americans would play a major role in determining the nature of a Cuban Government.

Arthur M. Schlesinger Jr. had, in his memorandum to the President, offered advice on how John F. Kennedy should go about lying on the question of U.S. responsibility for the Bay of Pigs invasion. He had, as William Appleman Williams put it, "valued his future influence more than his present morality. Schlesinger's failure is particularly striking because he has so diligently and haughtily criticized the Communists for just that scale of values—and also because he has stressed [as an historian] the moral issue of slavery in explaining the coming of the American Civil War." And his failure was even more striking since we now know that Schlesinger fully understood the objections raised by the plan's most serious critics.

Once court philosopher Schlesinger left service to government, he proceeded to use his talents to write a history of the administration he had served. And as an historian, the memorandum examined herein indicates, Mr. Schlesinger failed on a second count. In his book, he distorted the account of the advice he gave to the President, thereby distorting the historical record.

Mr. Schlesinger has been in the forefront of scholars who chastise those they term New Left historians for the departure from truth which their partisanship supposedly takes them. In a communication published in *The Washington Post* on July 18, 1973, Schlesinger complained that one such New Left historian had engaged in "sleazy quotation out of context with shameless invention." He concluded: "What the New Left historians must some time learn is that the point of history is to give a fair representation of what happened in the past, not to manipulate, distort and fabricate evidence to serve the interests of their own politics. Until they learn to do this . . . it is hard to take them very seriously as scholars." If one takes that statement as a guideline for all historians, and removes the implication that only New Left scholars are guilty of blindness caused by partisanship, it is indeed a standard worth living up to. But historians, like other men, should practice what they preach. □

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JUDICIAL THICKET

The Supreme Court and 'Obscenity'

MEL FRIEDMAN

Obscenity cases are a dangerous "hodgepodge," former U.S. Supreme Court Justice William O. Douglas once fumed. "They have no business being in the courts." This year marks the twentieth anniversary of *Roth* v. *United States*, the High Court's landmark statement on the First Amendment status of erotica, and Douglas's fundamental objection still holds true.

Roth inaugurated the Court's long and sorry involvement in a semantic and juridical nightmare. And, as the Supreme Court's obscenity decisions during its spring 1977 term suggest, adjudication in that area remains an unending thicket. The four cases handed down—*Marks* v. *United States*, *Smith* v. *United States*, *Splawn* v. *California* and *Ward* v. *Illinois*—merely confirm the truth that even the most ambitious attempts to make "obscenity" legally meaningful and morally tolerable are destined to failure. In fact, during its expired term, the Burger Court has begun the inexorable process of unraveling its own best guidelines, the obscenity standards enunciated in *Miller* v. *California* in 1973. What is distressing about these opinions is the Court's apparent willingness to live with unconstitutional ambiguity rather than repudiate a pernicious and unworkable doctrine.

That doctrine, rooted in *Roth*, holds that the Constitution protects only valuable ideas. Obscenity, which was defined in *Roth* as incorrigibly worthless, was therefore unentitled to privileged defense in the marketplace of ideas or the courtroom. By fiat, it became leprous speech that appropriately could be hounded and interdicted by both state and federal governments.

While *Roth* in some respects was an advance over previous approaches, it created a host of problems, not the least of which was the Court's inability to agree on a definition of obscenity to guide prosecutions. In 1966 the first major overhaul of the law was attempted in *Memoirs* v. *Massachusetts*, a case involving the book *Fanny Hill*. The Warren Court moved to confine obscenity offenses to assertedly "hard-core" materials and simultaneously require a greater burden of proof before sexually oriented works could be proscribed. To qualify as "obscene," materials had to be shown to appeal to a "prurient interest" in sex, to be "patently offensive" to "contemporary community standards" regarding sex, and to be "utterly without redeeming social value."

The ruling, which breathed some life back into the First Amendment, was itself superseded when internal ideological squabbles, Court retirements and Richard Nixon finally took their toll. The confirmation of his four High Court appointments—Chief Justice Burger and Associate Justices Blackmun, Powell and Rehnquist—set the stage for the conservative reconsideration of obscenity law. It is now bearing fruit in the spate of "backwater" prosecutions of such persons as *Hustler* magazine publisher Larry Flynt in Cincinnati, Ohio, *Screw* magazine co-publishers Al Goldstein and Jim Buckley in Wichita, Kan. and *Deep Throat* film actor Herbert Streicher ("Harry Reems") in Memphis, Tenn.

Miller v. *California* and its four companion cases, decided in 1973, comprise the new testament regarding obscenity. As the fulcrum for the current cases and current constitutional argument, the *Miller* principles must be briefly outlined.

First, *Miller* settled the rancorous issue of which "community standards," local or national, were to be applied by a jury to determine obscenity. The Court held that in state and federal proceedings the sexual norms of the local community were to prevail. States were free to adopt "national" standards or decriminalize all dealings in pornography if they so wished, but they could not be compelled to do so.

Second, the Burger majority (with Justice Byron White providing the fifth vote) agreed that it was time to return the momentum to the prosecution. It replaced the *Memoirs* "utterly" test with a more relaxed standard of proof. Henceforth, sexually graphic works that lacked "serious literary, artistic, political, or scientific value" were to be proper candidates for the obscenity dragnet. Also, because the jury was regarded as a delicate litmus of community standards, no proof of those standards in court was necessary and "expert testimony" need not be admitted. It would be sufficient merely to sequester the jurors with the offending materials to achieve a constitutional verdict.

Third, in an apparent effort to still the sharp complaints that obscenity prosecutions "chilled" the First Amendment and failed to give potential violators "fair warning" of what conduct was criminal, *Miller* established an important due process guarantee. Prosecutions would be limited to materials that depicted or described "patently offensive" sexual conduct "specifically defined by the applicable state law."

The *Miller* Court also held that an individual's right to read erotica in the privacy of the home created no further rights to receive, transport, distribute, import or publicly display them. In the Court's view, "hard-core" materials, where the law so decreed, remained illegal at their source and all along the chain of production and distribution.

Inherent in the *Miller* cases was a latent bombshell. The possibility existed that producers, publishers and distributors of nationally circulated materials would have to answer to local communities that found their wares offensive. Ostensibly a blow for local, *geographic* self-determination, it was in fact an invitation for *ideological* reaction, permitting moralistic communities to launch a jihad against smut and the First Amendment.

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This is precisely what happened in the Flynt, Goldstein and Reems cases. Moreover, because a person who sends obscene material through the U.S. mails can be indicted in any district in which it is mailed, received or through which it passes, federal prosecutors have been presented with an enhanced motive for entrapping alleged smut peddlers in the "least tolerant" community. Such elaborate machinations, comments Herald P. Fahringer, chief defense attorney for both Flynt and Goldstein, "take on the proportions of Kafka." The Court, he charges, is "slowly, but surely, eliminating whatever other safeguards we had left to obtain fair trials. Every time I pick up one of these cases, it seems, another important defense tool has been taken away."

Three of the four 1977 Supreme Court obscenity decisions continue that trend. All reflect the confusion and disarray engendered by *Miller*, and all but one were 5-to-4 rulings, with the Burger bloc dominant over the liberal dissenters (Justices Brennan, Stewart, Marshall and Stevens).

Marks v. *United States*, handed down March 1, is noteworthy for two reasons. It is the case that helped free Harry Reems and, concurrently, the first to clarify the position of Justice Stevens, the Court's newest member and maverick voice.

Before *Miller* v. *California* was announced, Stanley Marks, a Newport, Ky. theatre owner, and several others, were indicted on federal charges of transporting obscene materials (*Deep Throat* and other films) in interstate commerce, and of conspiring to do so. He was tried and convicted after *Miller*, based on the criteria for determining obscenity established by that case. Marks claimed he was entitled to jury instructions under the test that was in operation at the time of his alleged crime, i.e., the *Memoirs* rule that directed acquittal unless the materials were found to be "utterly without redeeming social value." The Supreme Court ruling was in agreement.

Justice Powell, delivering the opinion, acknowledged that "there can be little doubt that the third test announced in *Miller*—whether the work 'lacks serious literary, artistic, political, or scientific value'—expanded criminal liability." Marks and his associates, "engaged in the business of marketing dicey films," had been deprived of fair warning that their products would be subjected to less stringent prosecutorial standards of proof. The case was remanded for retrial.

Justices Brennan, Stewart and Marshall concurred in the opinion, but demurred from the judgment, tersely reasserting their belief that the federal statute was "clearly overbroad and unconstitutional." Since 1973, and in each of the instant cases, this has been their joint principled dissent.

Justice Stevens, however, declared his willingness to challenge the foundations of the Court's obscenity doctrine. It is illogical, he chided, for a person to be criminally prosecuted "for providing another with material he has a constitutional right to possess."

In April, a Federal District Court judge in Memphis overturned the 1976 conviction of Harry Reems on the identical charge as Marks. Reems, too, had been subjected to a retroactive application of *Miller* to the same film. Freed on a technicality, the ethics and justice of trying Reems in the midst of the "Bible Belt," in a city he had never before visited, for conduct—one day's acting—that took place in Miami, Fla., could be blithely ignored. Obscenity trials were making for costly "tourism."

Smith v. *United States* begins the Court's "Catch-22" enfeeblement of its new obscenity standards. Its reasoning inveighs against all the solemn *Miller* pronouncements that the Court was permitting the states to "chart their own course" in devising methods of regulating—or deregulating—traffic in pornography.

The facts are these: In 1974, the Iowa state legislature removed all criminal penalties for the distribution of sexually related matter to consenting adults. Jerry Lee Smith, of Des Moines, was indicted and convicted, however, a year later on a federal charge of using the mails to distribute obscene materials. The mailings, requested by federal postal "decoys," were totally intra-Iowa. At the trial, no evidence was adduced by the government that any of the agents, themselves, had been harmed or offended by the materials or that the pornography had been unknowingly thrust upon them. This was a case of a transaction that was entirely legal under the 1974 Iowa law.

The constitutional issues were simple and clear-cut: did the Iowa state legislature set the relevant "local community standard" to be applied in a federal proceeding and, conversely, did a federal jury have the power to "nullify" the intent of a valid state law? The Federal District Court which tried Smith said that the Iowa law was only "evidence" of community norms and was not binding. Moreover, the jurors were instructed to make their own independent assessment of Iowa's sexual mores and apply it to this federal case. The Federal Court of Appeals upheld the conviction and the Supreme Court affirmed 5-to-4, with Justice Blackmun speaking for the majority.

The Court noted that the postal power was a matter of federal jurisdiction and, for the purposes of the particular case, local community standards could be interpreted to mean whatever federally related geographic or jurisdictional area the trial judge deemed proper. Justice Blackmun then went on to deliver an astonishing declaration. The question of the correct community standard to apply was "not one that can be defined legislatively." This irreducibly asserted that twelve jurors, randomly selected, could peer more unerringly into the soul of the polity—however grossly defined—than their more numerous and (theoretically) democratically responsible state Representatives.

To the contrary, the respected expert on "obscenity," Prof. Frederick Schauer, wrote in his treatise, *The Law of Obscenity* (1976): "In a federal prosecution under local standards . . . state statutes may be relevant evidence of community standards. If the state law of the relevant community does not make 'obscenity' a crime, or perhaps only includes minors [as in the Iowa case], then the law, theoretically embodying the wishes of the community, should be probative as to the standards of the community."

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Justice Stevens wrote sharply in his *Smith* dissent: "The transaction itself offended no one and violated no Iowa law. Nevertheless, because the materials proved 'offensive' to third parties [the federal jurors] who were not intended to see them, a federal crime was committed." Though the case represented, he said, a "logical extension" of the Court's obscenity doctrine, the inequity of such prosecutions did not point to a continuation along the same flawed path, but rather a "principled re-examination" of the premises upon which they were based. Jurors do not possess infallible knowledge of community standards. Such ineffable understanding, he wrote, "can only relate to isolated communities where jurors are well enough acquainted with members . . . to know their private tastes and values." Although he believed pornography to be an insipid "public nuisance," the line between materials which "offend" and those which do not was too blurred to remove it from "at least a modicum of First Amendment protection."

Smith is an epitome of the hypocrisy of *Miller*'s affirmation of local community standards. Moreover, it underscores the illusory nature of the due process rights to which a defendant may appeal for vindication. This is true in all the recent prosecutions, whether the accused has been Larry Flynt, Al Goldstein, Harry Reems or Jerry Lee Smith. In *Smith*, for example, the judge did not permit the defense to ask jurors preliminary questions as to how they might know about community standards regarding sex. Yet these inscrutable norms were used to convict Smith, making a principled defense or even appellate review impossible.

How can a superior judge ever say that jurors applied the *wrong* norms when they are deemed the pristine source of those value judgments? And finally, because Jerry Lee Smith had every reason to believe his conduct innocent under Iowa law, how could he predetermine that the federal government would reach out and subvert that law to imprison him? *Miller* applied local standards to federal prosecutions. In *Smith* the Court reversed that affirmation of faith in the states. The federal government, acting through a judicial "fail-safe" mechanism, can now legally fashion its own local community to repudiate those permissive state laws it finds objectionable.

Splawn v. *California*, the third 1977 obscenity decision, is a complex case that turns on the issue of what kinds of evidence may be introduced by the prosecution to obtain conviction. It is the first post-*Miller* state case to reach the Court that challenges the wisdom of its "pandering" doctrine as established in *Ginzburg* v. *United States* (1966). A 1974 decision reaffirmed its validity in federal trials.

Ginzburg, a federal mails case, decreed that publisher Ralph Ginzburg could be sent to jail based on weighted evidence stressing his advertising antics for borderline "obscene" publications. The Court held that in close cases, when the jury was conflicted over the actual question of obscenity, the prosecution could produce information that the materials were purveyed as "sexually provocative," thus justifying a "guilty" verdict. In this fashion, otherwise "nonobscene" works could be adjudged "obscene" based on evidence extraneous to the works themselves.

On November 7, 1969, Roy Splawn, operator of a Redwood City, Calif. "adult" bookstore, sold two reels of sexually explicit film to a police undercover agent. Three days later, an amendment to the California obscenity statute adopting the *Ginzburg* rule went into effect. Splawn was tried and convicted in 1971 of a misdemeanor under the revised law. The jury was instructed to consider evidence of "pandering" in the transaction. That evidence solely consisted of photographs of the store interior plus police testimony that Splawn had assured that the film would contain "sucking toes, licking navels and everything else."

The case went to the Supreme Court to challenge the validity of those instructions and determine whether Splawn had been subjected to an *ex post facto* application of the "pandering" amendment. Justice Rehnquist, writing for the majority, refused to interpret *Ginzburg* as having authorized a new category of culpable conduct. The California statute, he said, did "not create any new substantive offense," but merely had outlined permissible evidence. Justice Rehnquist dismissed his second challenge on the basis of a complex reading of a California Supreme Court decision crucial to Splawn's *ex post facto* claim.

Yet *Splawn* remains an insidious case for all the things the Court chose not to mention. First, Splawn is representative of all the retailers and wholesalers in the country, from the biggest smut dealers to the corner candy-store owner with a "girlie" magazine display. Ralph Ginzburg was a publisher with presumably greater control over the way his publications were advertised. Second, the facts do not show Splawn "pandered." The police agent pressured Splawn at least six times before he agreed to secure films that were not normally sold in his store. Moreover, *Ginzburg* adjured that commercial activity alone was "no *justification* for narrowing the protection of expression secured by the First Amendment." The Court in *Splawn* greatly weakened that barrier to treating the normal circumstances of a sale as salacious consumer seduction. Finally, as Justice Stevens noted, in dissent, "Truthful statements which are neither misleading nor offensive are protected by the First Amendment even though made for a commercial purpose." Citing recent Court decisions that upheld the utility of advertising as providing consumers with valuable information, he noted the fundamental contradiction. Passive advertising of obscenity, where it occurs, forewarns the unsuspecting consumer. He concluded: "I would not send Mr. Splawn to jail for telling the truth about his shabby business."

The final case, *Ward* v. *Illinois*, undermines the one saving grace of the *Miller* decisions, its requirement that prosecutions be limited to materials that portray "hard-core" sexual conduct "specifically defined by the regulating state law, as written or construed." It arose in connection with the 1972 conviction of Wesley Ward, a Peoria, Ill. bookstore owner, for selling "sado-masochistic" literature. The ruling, which reached the Illinois Supreme Court after *Miller*, was protested on the ground

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that the governing Illinois statute did not specify what sexual conduct could be classified as "obscene." The Illinois court said that its prior decisions had incorporated the examples cited in *Miller* as suggestive of impermissible erotica. (Yet *Miller* omitted any reference to "sado-masochism" in *its* obscenity index.) On this basis it sustained the conviction.

The U.S. Supreme Court concurred. Justice White observed that previous Illinois decisions afforded Ward ample warning that "sado-masochistic" materials could be proscribed. Those rulings, he added, limited the reach of the law to the *"kinds* of sexual conduct" present in the works Ward sold. Therefore, the statute was not unconstitutionally vague or overbroad.

However, as Justice Stevens objected in dissent, the Illinois court never actually placed any limits on the state law, which he characterized as "open-ended." There is nothing in the Illinois decisions, he said, "that would preclude the state from prosecuting forms of obscenity not 'specifically defined' " in prior cases. To say that the list "need not be exhaustive," he concluded, "is to hold that a person can be prosecuted although the materials he sells are not specifically described in the list. Only five years ago, the Court promised that 'no one' could be so prosecuted."

The inescapable conclusion from an analysis of the Supreme Court's newest obscenity cases is that the problem remains no less intractable or violative of individual rights than twenty years ago. In addition, the Burger Court now finds, as did its predecessor, that it must resort to Procrustean logic and *ad hoc* case-by-case adjudication to keep its *Miller* obscenity test afloat. However, in the process, it has vitiated those guidelines and undermined the First Amendment. More unfortunate prosecutions will probably result and the individual's right to see or read what he or she wishes will be further eroded.

The basic premise of obscenity law is that an immature public must be saved from its own dubious tastes. While pornography is certainly not a thing of beauty and its values are deeply questionable, the government ought not to be making the distinctions required for that form of salvation. Unholy visions underlie many of our waking moments and dreams. The world of ideas ought not to be witlessly contracted because this is so. □

LEGAL HISTORY OF AN INDIAN

SOUTH DAKOTA vs. DENNIS BANKS

HAROLD RUBIN

Dennis Banks, a leader of the American Indian Movement (AIM), is fighting South Dakota's attempt to have him extradited from California because he is convinced internment in a South Dakota jail is tantamount to a death sentence. The case is now before the California Supreme Court because it involves an unprecedented challenge to constitutional law and States' rights.

Banks has been a special target for reprisals by federal and state officials due to his role in the occupation of Alcatraz (1969), the trashing of the Bureau of Indian Affairs (1972), and the incidents at the Custer courthouse and Wounded Knee (1973). His current predicament traces back to 1974, when he was the tribal legal representative, and William Janklow, a white attorney, was the accused in a rape case that was tried before the Rosebud Reservation tribal court.

Banks, a Minnesota Ojibwa, and Russell Means, a South Dakota Sioux, had brought their words of militancy and resistance to the South Dakota reservations, and one of the messages was: demand justice in the white man's courts. (In South Dakota, Indians were 7 percent of the general population, but in the state's jail population they were about 45 percent.) Among the more blatant injustices that had been covered up by the Bureau of Indian Affairs (BIA) and the FBI on the Rosebud Sioux reservation was the rape in 1967 of 15-year-old Jancita Marie Eagledeer. She had been a baby sitter for the children of Janklow, who at that time had been retained by the Office of Economic Opportunity to give legal assistance to the Rosebud Sioux. Eagledeer testified to the tribal court that Janklow had offered to drive her home one evening after her baby-sitting duties were over. She said he turned down a deserted road, threatened to use a gun if she resisted, and raped her. She went to the Rosebud P.H.S. hospital, where the medical records contain evidence of the attack.

The Indian girl identified her assailant and an investigation of the rape charge was made by Pete Pitchlyn, BIA criminal investigator. He submitted his report to the FBI, but no charges were brought against the attorney. The girl went to Iowa to escape the shame of her rape, and the incident was buried until AIM leaders Banks and Means decided in 1972 to resurrect the case.

Banks got permission from the tribal president, Robert Burnett, and from Mario Gonzalez, the reservation's tribal judge, to proceed with an investigation. Pursuit of the Eagledeer case was interrupted by the clashes at Custer and Wounded Knee in early 1973, and it was 1974 before Banks was able to resume his efforts. He traced Pete Pitchlyn, who had retired from the BIA, to Oklahoma City, and persuaded the retired investigator to return to South Dakota to testify before the tribal court. Eagledeer also agreed to return from Iowa to give evidence, even though she told Banks that Janklow had threatened to kill her if she testified against him.

Judge Gonzalez, who heard the case in the tribal court, is a law graduate of the University of South Dakota,

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a member of the state bar association, and has practiced before the Federal District and Appellate Courts. Banks, who was the attorney of record in the proceedings, is a duly sworn member of the tribal bar.

A summons was delivered to Janklow, but he did not appear before the tribal court. The BIA area director, Harley D. Zephier, instructed the special officer for the reservation not to deliver documents subpoenaed from the Eagledeer rape file. After hearing the case, the tribal court disbarred Janklow from practicing on the reservation, and found probable cause that he may be guilty of two offenses under the tribal code: assault with intent to commit rape and carnal knowledge of a female under 16. Shortly thereafter, Eagledeer was found dead near the reservation, victim of a hit-and-run driver. Janklow, who was campaigning for office while the trial was going on, was elected state attorney general.

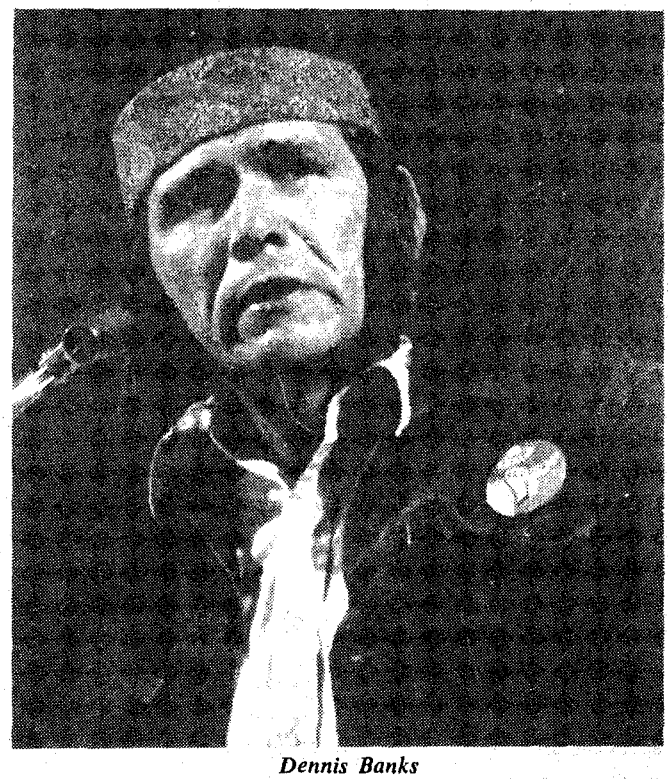
In the same year, South Dakota agreed to allow the federal government to try Banks for the 1973 incident at Wounded Knee. Because of widespread white hostility to AIM and its leaders in South Dakota, the Wounded Knee trial was moved to St. Paul, Minn. After hearings that lasted more than eight months, U.S. District Court Judge Fred B. Nichols dismissed all charges against Banks and Means on the ground of governmental misconduct. "This has been a bad year for justice, a bad year for justice," Nichols said, and lectured the federal prosecutor about misconduct by the FBI and other governmental officials, who had sought to disrupt the activities of dissident political groups. Nichols told the prosecutor, "It is the duty of prosecution to seek justice, not to convict."

Banks was then delivered to Oregon to face charges of possession of explosives. Again a federal judge ordered the case to be dropped. Next, he was arrested on a fugitive warrant from South Dakota, and Janklow tried to get Gov. Robert Straub of Oregon to extradite the prisoner. Straub made his own investigation, refused to accept Janklow's request, and released the prisoner.

But in January 1975, Banks went to trial in South Dakota for charges related to the Custer incident. This incident, dating back to 1973, involves allegations made against Banks for his role in an Indian protest, after a young man named Wesley Bad Heart Bull was stabbed and killed by a white man. Sarah Bad Heart Bull, the dead man's mother, asked Banks to help her get justice. Their first move was to schedule a demonstration in Custer to protest the accused killer's low bail.

Local police and state troopers reacted with tear gas and guns. In the resultant melee, Sarah Bad Heart Bull was strong-armed and choked. Together with a number of other Indians she was arrested. Banks, who was in the courthouse seeking to present the Indian grievances, broke a window to let in fresh air after a tear gas bomb was released. Angered by the unprovoked violence, some of the demonstrators retaliated by setting fire to the Chamber of Commerce building and the courthouse.

Three days later Banks was arrested and charged with arson, riot and assault. The dead man's mother was sentenced to one to five years in prison for having been present at a "riot where arson was committed." The white man who killed her son was eventually charged with second-degree manslaughter and acquitted by an all-white jury.



Dennis Banks

By the time Banks was returned to South Dakota and tried for the Custer incident, the charges had grown to eleven. Finding jurors in that state who were not biased against AIM leaders proved a problem. More than 300 were called before the necessary panel was filled. Predictably, the all-white jury returned with a guilty verdict. Before he was sentenced, Banks got permission to put his affairs in order, which he did by seeking sanctuary in California.

For more than a year, South Dakota's Gov. Richard Kneip and Attorney General Janklow have been trying to get Gov. Jerry Brown to extradite the Indian leader. When Brown did not comply, Janklow hired a Beverly Hills law firm to fight the case in the California courts. Only one other time in the nation's history has the Governor of one state sought judicial intervention to compel the Governor of another state to accept an extradition request. That dispute occurred in 1861 on the eve of the Civil War, when Governor Dennison of Ohio refused to extradite a fugitive indicted in Kentucky for assisting a slave to escape. Although the Supreme Court heard the case and concluded there was an obligation to deliver, it refused to order Governor Dennison to perform that duty.

Because of this bar to federal enforcement in the present action, South Dakota has invoked the power of a state court against Governor Brown, citing the 1937 California Uniform Criminal Extradition Act, Penal Code. In April, the Third District Court of Appeal in Sacramento handed down an historic decision. Presiding Judge Robert K. Puglia wrote the court's opinion, which held that "Penal Code Section 1549.2 imposes a mandatory duty upon the Governor, independent of the federal provisions, and this duty is judicially enforceable." Puglia

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also ruled that Brown had received a request from South Dakota which does not require investigation beyond determination of the request's validity.

After the Appellate Court decision, a UPI news release from South Dakota quoted Janklow as commenting, "At least the California courts function, even if nothing else out there does. . . . Brown will screw around in the courts for another six, eight, nine months. He's got a lot of money and a lot of screwballs behind him."

Brown's attorney went back to the Appellate Court in May with an unsuccessful petition for rehearing and modification of the decision. He cited evidence to show a long-established historical and legal precedent in California and other states for Brown's position. The Governor's office believes the Banks case raises issues that go beyond the fate of one individual. For that reason, documents supporting Banks's allegations about his jeopardy have been kept confidential, not to avoid judicial or public scrutiny but to preserve the integrity of the separation of powers.

In essence, Brown believes the courts are not empowered to compel a Governor to issue a rendition warrant. Therefore, to submit evidence to the court to prove the presence of gross injustice is to accept the court's jurisdiction and right to issue a writ of mandate.

Brown's Interstate Rendition Officer, Alice A. Lytle, said, "Governor Brown has received numerous letters, petitions and affidavits, all urging the Governor to deny the extradition request for a variety of apparently substantial reasons." His legal advisers maintain he is entitled to withhold his rendition warrant in order to investigate the circumstances of the Banks case, and to inquire whether the requesting state would be willing to withdraw or modify its request.

While legal experts debate whether "shall" and "may" always mean what they seem to imply, Oakland, Calif. attorney Dennis Roberts, who represents Banks, is primarily concerned with what he perceives to be a very real threat to his client's life. He asked the Appellate Court's permission to provide some of the documents that have been submitted to Governor Brown. These, he claims, establish that threats were made on Banks's life by the very highest law-enforcement officials in South Dakota. He told the court the documents would show why granting the extradition would result in such a gross miscarriage of justice as to justify the Governor in refusing to grant the extradition. Roberts's motion was denied.

Although Banks is the principal in the extradition case, he has nearly been pushed into the background by the legal issues involved. Yet it is not in his character to sit passively by while white men play exquisite legal games that could cost him his life. South Dakota does not offer a healthy climate for AIM leaders or followers, in or out of prison. Attempts have been made on the life of Russell Means; numerous AIM members have been the victims of unsolved murders. Janklow has been quoted as prescribing "a bullet in the head" as the cure for South Dakota's problems with AIM. Before he fled, Banks was told he would not last twenty minutes in a South Dakota jail.

In the 1960s, Banks served three years in a Minnesota jail, and that experience might have made him into a compulsive loser. Instead he looks back and says, "I was 'born' in prison. I began to understand who I was." Both Banks and Means put AIM together with the goal of undoing four centuries of oppression and injustice. The AIM banner expresses their position with a slogan, "United We Are One Powerful Fist—Dignity, Pride, Unity." Its colors are red, black and yellow, for the nonwhite races; and green, which represents the land.

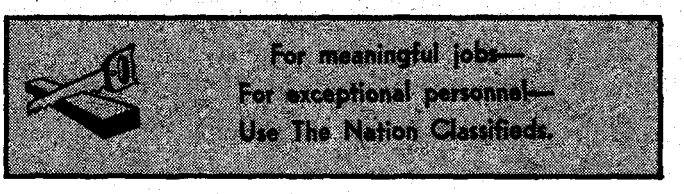
AIM has obviously made an important contribution to the Indian awakening. Today more than half of the Indian tribes are part of a legal offensive to regain lost land, fishing and hunting rights, and rights to minerals and water. [See "Indian Lawsuits and White Power" by Petra T. Shattuck and Jill Norgren, *The Nation*, July 2.] Indians are no longer the least conspicuous and most docile minority.

But AIM leaders and members have paid a price: they have been leaned on heavily by federal and state officials. Although the hard-line Nixon-Mitchell crowd has departed and J. Edgar Hoover is dead, illegal actions, surveillance and harassment of AIM continue.

Since taking sanctuary in California, Banks has been a full-time faculty member at Deganawidah-Quetzalcoatl University, about 20 miles west of Sacramento. DQU opened in 1971 after a long struggle by Native Americans to acquire a few abandoned army communications center buildings on 643 acres of surplus federal land. Studies at DQU are devoted mainly to the Native American and Chicano cultures.

Banks teaches classes in federal Indian law and Native American religion and philosophy. He lives in a small trailer at the back end of the campus within view of the coastal range to the west, where a tepee is silhouetted against the sky. Banks and some students are building Indian sweat houses and a lodge for religious ceremonies. Now and then he speaks at nearby colleges.

Anti-extradition rallies in his behalf are being held around the state, similar to one in San Francisco on May 21, which was also attended by the FBI. Petitions are being circulated to support Governor Brown's position. A striking feature of the support for Banks is the broad-based Third World backing he has attracted, something Governor Brown has to consider. He has sent the case to the California Supreme Court. In the event that the Appellate Court decision is not reversed, the Governor is likely to go to the U.S. Supreme Court. Whatever the outcome of his latest confrontation with Janklow of South Dakota, Banks has not lost sight of AIM goals. He told the San Francisco rally, "It is important to understand that we are not asking for one man to be saved. We want the mistreatment of all minorities to end." □



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BOOKS & THE ARTS

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THE COMPLETE PLAYS. *By Joe Orton. Grove Press. 448 pp. Paper $4.95.*

GERALD WEALES

There is a scene in *Freebie and the Bean* in which one of the titular policemen traps a transvestite killer in a ladies' room. Half undressed, a sexual composite, the criminal defends himself with elegant dance turns that end in savage, high-heeled kicks which disarm Freebie. Finally regaining his pistol, the policeman fires four or five shots into the perversely beautiful man/woman who sinks slowly down the wall, jerking in pseudo-sexual spasms as each bullet hits. The movie is being peddled as a raucous comedy, happy hilarity without a touch of social significance. It is from the vantage point of such casual comic grotesquerie that one must look back to the plays of Joe Orton, all written between 1963 and 1967. Murder, riot, theft, bribery, blasphemy, madness and sex in all its brightest colors (nymphomania, homosexuality, rape, incest, transvestism and old-fashioned heterosexual hanky-panky)—these are the materials that go into Orton's plays, but it is difficult to imagine that his comedies were ever disturbing.

"Orton, like oysters, is an acquired taste," Frank Marcus wrote in his essay on the London season in *The Best Plays of 1966-1967*. John Lahr, in his introduction to *The Complete Plays*, quotes Orton as saying much the same thing, without the oysters, in a passage in which he discounts the success of his first full-length play, *Entertaining Mr. Sloane*. Despite this standard author's lament, England quickly developed the taste for Orton. *Mr. Sloane* had a respectable West End run after transferring from the New Arts Theatre, and it won the London Critics' "Variety" Award as the best play of 1964. There were the usual denunciations of the wicked new playwright, some of them written by Orton himself, as Edna Welthorpe (Mrs.), which helped to feed his reputation as a naughty young man. After a disastrous first production, *Loot*, his second play, went on to become a commercial success in 1966. *Crimes of Passion*, a double bill consisting of revised versions of an earlier radio play, *The Ruffian on the Stair*, and a television play, *The Erpingham Camp*, was produced in June 1967, and during the following month Orton made final revisions on *What the Butler Saw*. Every prospect promised continued success for the young playwright when, on August 10, he was killed by the man who had been his lover since the early 1950s. The notoriety surrounding his death (Kenneth Halliwell beat out his brains with a hammer and then committed suicide) was a ghastly confirmation of Orton's darkest view of human behavior and, ironically, fed his reputation as the playwright of the underside of contemporary life. It was a temporary transfer of private image to public work, however, for by the time *What the Butler Saw* had finished its West End run in 1968, Orton had become an established English comic writer, a legitimate heir to Congreve and Wilde. In 1975, his three major works were revived in a "Joe Orton Festival" at the Royal Court Theatre.

In the United States the taste for Orton developed more slowly. When *Entertaining Mr. Sloane* was produced on Broadway in 1965, most of the reviewers greeted it with indifference or distaste. Two of them, in the great olfactory tradition with which the British critics first greeted Ibsen, found it "merely a smelly spectacle" (John McClain in the *Journal-American*) with "the sprightly charm of a medieval English cesspool" (Norman Nadel in the *World-Telegram & Sun*). The play closed after thirteen performances. The reviewers were calmer when *Loot* appeared three years later, perhaps because both angry papers were dead, but no more enthusiastic; even with the bemused blessing of Clive Barnes, the play lasted only a few days longer than *Mr. Sloane* had. *Crimes of Passion* played briefly Off-Broadway in 1969, but that year saw the first dead-certain straw in the changing wind, a production of *Entertaining Mr. Sloane* at the Dallas Theatre Center. In 1970, *What the Butler Saw* began a very successful run Off-Broadway (in a production that struck me as dull and witless), and since then no season has passed without several Orton productions, in regional theatres or off-Off-Broadway. Now, Grove, which published Orton's long plays in separate editions, has issued *The Complete Plays*, which includes not only those mentioned above but *The Good and Faithful Servant* and *Funeral Games*, both of which began as television plays. John Lahr, who has been one of Orton's staunchest American defenders from the beginning, not only introduces the new collection but he has finished his biography of Orton which will be published shortly under the wonderfully ambiguous title, *Prick Up Your Ears*.

For Lahr, Orton has always been a serious playwright, one who violates all the polite conventions in the interest of public health. In "Artist of the Outrageous," the *Evergreen Review* essay that became the introduction to the Grove edition of *What the Butler Saw*, Lahr calls Orton "the vituperative anti-Christ, isolated by his anarchist rage and cynical in his desolation," who, contrariwise, writes plays that "offend in order to instruct and heal." Céline as Ben Jonson, I guess, but then Lahr has always had a penchant for critical overstatement; at about the time of the Orton essay, he was reviewing a new production of Mary Chase's *Harvey* and discovering that "the play is essentially violent, ugly, and deeply disturbing" (*The Village Voice*, March 5, 1970). The tone is less strident in the introduction to *The Complete Plays*, although Orton is still "a survivor whose brutal laughter was a vindictive triumph." Here Lahr lets Orton speak for himself. "But laughter is a serious business," Orton wrote in 1963, "and comedy a weapon more dangerous than tragedy." Obviously less didactic than Lahr made him sound in the early essay, Orton could still say, as he did in 1967, "any original writer will always force the world to see the world his way."

The quotation above is probably more aesthetic than ideational in its intention, which is not the case with Lahr's variation on it in "Artist of the Outrageous": "Orton's farces make an audience confront the schizophrenic patterns of their lives, rather than evade them." Actually, evasion is probably the key to Orton's continuing success. In the ten years since his death, his work has become more entertaining than shocking. Although a playwright can be at once serious and popular—as Orton insisted in his anger

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at John Russell Taylor for calling him a "commercial dramatist" in *New English Dramatists 8* and contrasting that label to "original artist"—Orton has been domesticated into the repertory mainstream in a way that English playwrights as different as Charles Wood and Heathcote Williams are never likely to be. Orton is a popular entertainer not all that different from Tom Stoppard.

Entertaining Mr. Sloane may have seemed a bit daring when it first appeared, with its brother and sister who decide, at the end of the play, to share sexually the murderer of their father. Even then, a good gray reviewer like Richard Watts Jr. on *The New York Post*, never an Orton admirer, could comment on the play's "wistful efforts to be shocking." Now, certainly, the structural skeleton of the play can be seen clearly through its teasing flesh, and it turns out to be an old friend of popular theatre. Lahr clings to an earlier reading of the play when, commenting on Sloane's refusal to feel guilt, he describes him as "a survivor whose egotism is rewarded, not punished." I hear the pouting voice of Sloane in Act Two complaining to Kath that "You're attempting to run my life," and then see him at the final curtain, a dish served up for Kath and Ed, and find myself wondering about Lahr's idea of rewards. The play is clearly a variation on the con man conned, the manipulator outmaneuvered, and the thrust of that conventional plot is stronger, in terms of audience allegiance, than the lubricious and murderous surface.

In *Loot*, too, conventional form is working to spike the guns of shock, but by the time he got to that play, Orton had decided to use traditional farce technique—deadpan earnestness overlaying improbable frenetic activity—as the vehicle for his sex-and-sadism games. An early *farceur* like Courteline—in *Les Boulingrin* and *Le Commissaire est bon enfant*—could ruffle the implausibly plausible surface of farce with violence or the threat of it and make his plays both horrible and funny. With Orton, who has upped the violence ante, the exercise lapses into innocence, probably because form and substance are not as inextricably mixed in his work as they are in Courteline's.

In the United States, at least, there is a second reason why a play like *Loot* should be harmlessly funny—one that long antedates movies like *Freebie and the Bean*. Although the chief motivation in *Loot* is greed, the chief joke has to do with the games played at the expense of the resident corpse, an attack on "the most deep-seated myths of English culture," as Lahr so portentously puts it. Our tradition of murder farces and dead-body slapstick makes *Loot* a familiar enough product. "Has anybody ever hidden money in a coffin?" asks Hal, and Dennis, adding titillation to titillation, says, "Not when it was in use." If Dennis had not been so busy putting teen-age girls in the pudding club, he might have got to the movies often enough to have seen *Ocean's Eleven*, Lewis Milestone's 1960 mystery comedy in which the stolen money shares coffin space with one of the hero-thieves. Movies like *A Slight Case of Murder* (1938) and plays like *Arsenic and Old Lace* (1941) conditioned American audiences to murder as fun and the intractable body as a comic prop. In the 1950s, there were a handful of movies—Claude Binyon's *Stella* and Alfred Hitchcock's *The Trouble with Harry*—which were more serious about their death games, making satiric points and—in Hitchcock's case—sprinkling the grave with sexual *entendre*. Anyone who remembers an impeccably genteel Mildred Natwick leaning across the makeshift grave in *The Trouble with Harry* to say seductively to Edmund Gwenn, "After we've dug him up, we'll go back to my place and I'll make you some hot chocolate," is going to feel very much at home in *Loot*, untroubled by outrage.

The madhouse metaphor of *What the Butler Saw*, a sex farce which takes place in a private clinic, is at least as old as *Peer Gynt*. London had seen Peter Weiss's *Marat/Sade* and Friedrich Dürrenmatt's *The Physicists* in the early 1960s. Accustomed to harsher versions of the asylum as a surrogate for society, the audience was ready, with *Butler*, to take the sex gags, the verbal jokes, the disguises, the Gilbert-and-Sullivan revelations as good clean fun and let the greater implications go hang. Orton's play became its formal elements at the expense of any substantive point. Farce has always had a dark underside, as Eric Bentley suggests in "The Psychology of Farce" and as Lahr demonstrates when he submerges himself in an unfamiliar *Harvey*, but the teasing pull of buried nihilism in conventional farces like *Room Service* or *Three Men on a Horse* depends, I suspect, on keeping the potential harshness hidden beneath a frenzied surface concern with, in these two examples, show business and horse racing. In introducing a gallery of crimes, sins and casual kinkiness into his plays, Orton provides a surface through which the audience can step not to find lurking horror but latent innocence. *The Importance of Being Earnest* is subversive in a way that *What the Butler Saw* cannot begin to approximate.

Orton's major talent, his dexterous turn of phrase, contributes to the defusing of his potentially dangerous characters and situations. There are elements in *The Ruffian on the Stair* (Wilson's affection for his dead brother) and *The Good and Faithful Servant* (Buchanan's death scene) that are sentimental, or might be played sentimentally, but for the most part Orton adheres to the detachment that he says he learned "in the nick." (Orton and Halliwell went to jail for mutilating books, an event that Lahr might consider for its metaphorical implications; their surreal doctoring of books was an adolescent joke no more likely to improve the reading habits of the Islington library patrons than Orton's farces will make us face the social schizophrenia to which Lahr, with the help of R.D. Laing, has sentenced us.) Anyone who writes seriously about Orton, as Lahr's work indicates, is likely to dissolve into a collection of quotations. The lines are appealing, at their best when a benign platitude is ambushed by its context. "Don't blame us too much, Raymond," says the boy's grandmother in *Servant*, explaining a youthful peccadillo. "Try to imagine what it's like to be young." Ed, wanting to convert Sloane from a taste for girls, says, "With me behind you, boy, you'll grow out of it," a line with a resonance that depends on Ed's plan to seduce the young man. "We're Children of Light. Not criminals," says Pringle in *Funeral Games*. "Tangle with the Prince of Peace and you'll find a knife in your back." The lines pick up whatever richness they have by twisting the circumstances to emphasize ludicrousness and, then, by abandoning the immediate context and edging toward generalization. One result is to stress the artificiality of the plays, even to celebrate it. This effect is heightened by Orton's language, a mock elegance teetering on the edge of epigram. The tone is intensified by the judicious intrusion of slang and by a primness emphasized by the fact that the works are almost free of the obscenity that the milieu might suggest; when the police inspector at the end of *Loot* says, "You're fucking nicked, my old beauty," the adjective is momentarily startling, since the word appears nowhere else in Orton's plays, but the effect is immediately smoothed as the character moves on to the formal infelicities of the official voice, "You've found to your cost that the standards. . . ."

Lahr quotes a long passage from Orton in which he discusses style as a

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reflection of the author and as an embodiment of the real (as against the naturalistic). Orton's style, finally, is the only real thing about his plays. More artistic than outrageous, Orton is a closet classicist, soothing the audiences that, if we can believe Lahr, he once set out to shock into self-knowledge. The cesspool that so alarmed Norman Nadel turns out to be an ornamental pool. Still, there are some strange fish in it. □

Facades at Face Value

THE FALL OF PUBLIC MAN. *By Richard Sennett. Alfred A. Knopf. 373 pp. $15.*

MARSHALL BERMAN

The delayed harvest of the 1960s keeps coming in, often in fields where we least expect it. Richard Sennett's *The Fall of Public Man* is the latest in a peculiar genre of books that have appeared in American social science over the last few years. Earlier entries in the genre include Kate Millett's *Sexual Politics,* Joel Kovel's *White Racism: a Psychohistory,* William Irwin Thompson's *At the Edge of History,* Michael Rogin's *Fathers and Children,* and Edward Shorter's *The Making of the Modern Family.* The authors, in their middle or late 30s when their books appeared, have all been trained at the best schools, and shown the capacity to produce first-rate scholarly work in their various disciplines. But all of them, inspired (their detractors would say infected) by the extravagant and adventurous spirit of the 1960s, have chosen to move out of their academic shelters, and to wrestle in direct and personal ways with world-historical forces. Accordingly, they have produced books that take big risks, mix methods and styles, make great speculative leaps, erect vast structures on tenuous grounds, jump-cut and jump-dissolve from one civilization to another, thousands of miles or years apart, and from one universe of discourse to another, from philosophical exegesis to dream interpretation, from statistics to science fiction. All these books, to different degrees, are brilliant and provocative, yet sloppy and irresponsible. All are peculiarly elusive, so that it's hard to know where the author stands in relation to his material. Does he believe all the bizarre things he seems to be saying? Is he putting us on, or being elaborately ironic in ways he himself can't understand? Is this mishmash, or flimflam? Reading them is at once frustrating and fruitful, in much the same ways as reading Mailer or Pynchon, who may turn out to be the most influential authors in the social science of the 1970s. Our culture would be a lot poorer without books like these; we must salute them, yet keep ourselves on guard.

Sennett's project in *The Fall of Public Man* is to explore and interpret the forms of drama that have developed in Western urban societies over the past two centuries. He is interested not merely in the forms of drama enacted in theatres, but in those that unfold in the streets, in cafés, parks, assembly halls, wherever people gather together in public space. He examines the structure of dramatic environments, changing styles of presentation and performance, varieties of costume and scenery, the performers' relation to their texts, to their audience and to one another. He is interested not only in the established conventions but in the elusive zone of mannerisms and gestures, signs and signals that people learn, often unconsciously, to give and to receive, so as to define themselves as they want to be seen.

Sennett especially admires the incisive and subtle work of the sociologist Erving Goffman (*The Presentation of Self in Everyday Life, Interaction Ritual, Relations in Public,* etc.). But he wants to give this sort of inquiry an historical dimension that Goffman's own work notoriously lacks, and to bring it into rapport with the great intellectual tradition, flowing from the Greeks through Hegel and Marx to Existentialism, which tries to interpret all human action and interaction in theatrical terms. Such a synthesis would be welcome, and it is exciting to think it might happen here. As we leaf through the book, and behold its vast scope—Sennett plans to lead us through Savonarola's Florence, 18th-century coffeehouses, 1848 barricades, changing styles in wigs and evening gowns, the development of department stores, the Dreyfus affair, the Lever Brothers building, Nazi rallies, the 1972 Forest Hills housing dispute, and much more—we cannot help but be dazzled by such verve and nerve. If it works, the book will not only thrill us but teach us something vital about our lives; even if it doesn't work, it will force us to work through crucial issues on our own.

Sennett's theoretical scheme is a kind of Paradise Lost, only without any Miltonic promises of redemption at the end. He believes that, over the past two centuries, Western values have evolved in a wholly disastrous way, from a public to a private center, from impersonality to intimacy, from performance to self-revelation, and from engagement into withdrawal from urban life. In the streets, theatres, parks, ballrooms, cafés, salons and even boudoirs of Paris and London of the mid-18th century, Sennett finds the Golden Age of urban life. Then people of all classes, even the poorest, lived lives of continuous performance, play and display. They arrayed themselves in the most extravagant costumes—they saw their bodies as mere hangers, the drapery was everything—and strove to surpass each other in brilliant repartee, to appear dashing and pleasing in public at all times, and so to make the city a spectacle of unending glamour and playful delight. Then, however—it is not exactly clear when or how the Fall took place—people began to get serious about their inner lives, to devalue the art of public performance, and to pursue emotional "authenticity" instead. From that moment on, they lost all interest in public life, and consumed themselves in hermetic self-absorption (alias "narcissism"); they withdrew from the urban forum into a walled intimacy of ghettos and suburbs. In politics, they began to judge policies only by the feelings they elicited, and politicians only by the emotions they displayed. They lost all sense of how to evaluate public acts or policies in their own right. Social and political history have been bankrupt ever since, with no deliverance in sight.

The liveliest parts of *The Fall of Public Man* are mostly in the first 100 pages where Sennett presents his golden age. He is endlessly fascinated by costumes and masks, has read a great deal on their history, and gives a delightful account of the extravagances of 18th-century fancy dress. He is vivid and interesting, too, on theatres, coffeehouses and cafés, and on the social conventions that sprang from them. He is perceptive in emphasizing what he calls "the bridge between the stage and the street," i.e., the ways in which people took theatrical performances as models

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for conduct in their everyday lives. Both, it appears, were ruled by norms of abstract impersonality: "Just as the actor touched people's feelings without revealing to them his own character offstage," so members of the audience strove to "arouse each other's feelings without having to define themselves to each other." Lord Chesterfield, who codified these norms—it's bad manners to look behind other people's masks, and bad policy to let them see behind yours—appears as one of Sennett's heroes: he helped to build a world of beautiful surfaces and façades. And those were the good old days for extramarital affairs, when "compliments were judged pleasing to the extent they were witty and well made in themselves," and women didn't give a damn what their lovers felt or whether they really cared.

As an account of 18th-century genteel conventions, this is not bad at all. But Sennett is making an absurd leap of faith when he asserts that these conventions gave everybody "emotional satisfaction" and a "balance between private and public life" that our own century lacks. To simply describe these forms, as he does, proves nothing in itself. How does he know the forms didn't make people feel unbalanced and miserable? As a matter of fact, the most important cultural figures of the 1750s, Sennett's golden decade, were Samuel Richardson and Rousseau, whose common theme was the frightful disparity between current social conventions and the depths of the human heart. Sennett doesn't like this kind of talk: "always asking others who we are, and never daring to ask ourselves"—Rousseau, in his *Discourse on Inequality*—"we have nothing to show for ourselves but a frivolous and deceitful appearance, honor without virtue, reason without wisdom, and pleasure without happiness." But whether he likes it or not, the fact is that thousands of urbane Parisians and Londoners instantly recognized themselves in embittered and anguished images like these. Had 18th-century urban life been as balanced and satisfying as Sennett would like to think, passages like those above would have been laughed out of court; as it was, they shook the pillars of the court.

Sennett makes much of the fact that, in the 18th-century theatre, his "audience of wigs and fripperies" laughed, cried, cheered, jeered, and sometimes stormed the stage. "It's the woman wearing the *pouf au sentiment* [an intricately sculpted wig several feet high] who exclaims against the rhymed politics of Beaumarchais; it's the pomaded man who weeps so unself-consciously at the fate of Lekain." Sennett waxes rhapsodic, and seems almost ready to cry himself:

> How can people whose lives are governed by impersonal and abstract convention be so spontaneous, so free to express themselves? . . . Can it be that the freedom to feel is greater when one's personality and one's identity in society are clearly separated? Can spontaneity and what we call 'artificiality' have some hidden and necessary relationship? They do. . . .

And he is off on a diatribe against revolution, romanticism, the 1960s, and everyone who lacks reverence for wigs and masks. But it will be hard for many of us to join him in his imaginative flight, because the images of freedom and spontaneity from which he takes off —that audience crying and cursing— frankly don't sound like such a big deal. Maybe if he knew the content of 18th-century drama as well as he knows its forms, he'd realize that the lady in the wig is probably cursing "the rhymed politics of Beaumarchais" because his Figaro is denouncing her class. If she jeers when he says that the nobility has done nothing to deserve its privileges except to be born, is that really a great expressive feat? As for the weeping, the men and women of the 18th century were far more self-aware and self-ironic about it than Sennett is. Dr. Johnson, one of his heroes, told Boswell how he relished weeping in the theatre for the cruel fate of a young man gone wrong, knowing all the while that he would be the first to send the rogue to the galleys or the gallows in real life. And there was a standing joke about the great lady crying in the warmth of a theatre over the plight of orphans in a storm, and forgetting about her coachman who meanwhile stood freezing in the snow outside. In other words, these people knew how to see through the most splendid façades, including their own—they had to know how, in order to survive. I'm not sure if it's tragic, or only farcical, that Sennett, in celebrating them, should take their façades at face value. It's a little like coming out of a bill of Busby Berkeley or Astaire-Rogers musicals, and yearning for the good old 1930s, when everybody wore top hats and tails, danced beautifully through the city streets and sang of happy days.

Sennett takes a big fall in his discussion of Rousseau. When Rousseau attacked the Parisian theatre (which Sennett equates with the Athenian one), what he was really attacking was Play; what he really wanted, we are told, was a regime of work and strict duty and nothing else, in which men would privately search for personal authenticity, while publicly submitting to totalitarian tyranny. It would take too long to deconstruct this weird misreading. The main thing here is that it simply ignores an idea that Rousseau rightly felt was central to his thought: the idea —dare we say it?—of "public man." The trouble with the French theatre, as he saw it, was that it was not public at all: "these exclusive spectacles that close up a small number of people in a gloomy cave, that keep them fearful and immobile, in silence and inaction, that show them only prisons, lances, soldiers, and images of servitude and inequality." What Rousseau sought was not an end to play, but a more fulfilling form of play: a political life, in a democratic republic, where every man, in his capacity as citizen, could play an active and vital role. The orator in a republican assembly would be as much a player, a performer, as any actor on a stage; the difference was that the orator "represents only himself, plays his own role, speaks in his own name, says (or ought to say) what he thinks; the man and the role being the same, he is in his place."

There is certainly an idea of authenticity here; but it is to be found, not in isolation and withdrawal but through participation in a shared political life. Rousseau fleshes out this ideal with an image of democratic public festivals that "let the spectators become an entertainment to themselves" and "make them actors themselves." He concludes that, "The only true joy is public joy." These visions prophesy nothing less than a second coming of "public man," after an absence of 2,000 years. In the revolutionary upheavals that bring the 18th century to an end, we can see a distinctively modern breed of public man coming into his own and taking the center of the historical stage.

Unfortunately, Sennett sees none of this. As far as he is concerned, the Age of Revolutions marks the burial of public man, not his rebirth. He doesn't seriously try to defend this perverse thesis—indeed, he doesn't even mention the French Revolution, except obliquely, in a brief discussion of the fashions of the Thermidorean counterrevolution. His strategy is to assert it again and again, until our senses are numbed and, then, on the basis of these assertions to accept the thesis as proven ("as we have seen" is the way he puts it) and go on from there. The trouble is, once the hero has been killed off, there's nowhere much to go—and we're barely a third of the way through! Just when Sennett should be taking off, and taking us with

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him, he proclaims a dying fall, and then drags us through the pits for 200 turgid pages and 200 empty years more.

Sennett's theory insists that once people begin to think about their feelings, it's impossible for them to think or care about anything or anyone else. It follows logically that "Social bonds and social interaction have receded in the face of inquiry about 'what am I feeling?'" Thus, since the end of the 18th century, we don't think about or dream about one another; we don't even want each other. We're all one big willfully "lonely crowd." Some of us may wonder about Sennett's use of "we," and ask: you and who else, bub? We can ask in vain as he takes us on a bizarre tour through 19th- and 20th-century Paris. Never, it seems, has any American in Paris had such a miserable time. But Sennett retains his originality: among the thousands of *tableaux de Paris* through the ages, this must surely be the first to paint the whole city gray on gray. Thus Sennett's Paris streets, despoiled by the Bad Baron Haussmann, are devoid of public space where people can encounter one another—never mind Haussmann's miles of boulevards, hundreds of feet wide, with extra broad sidewalks and pedestrian islands filled with trees and cafés on every corner. Sennett's Parisian department stores are mere containers of passivity and emptiness—he blames "industrial capitalism" for this—because, once prices are standardized, there's nothing for sellers and buyers to argue about, and hence no basis for human interaction, so everyone shrinks into himself, looks, buys, and leaves. Since the Galeries Lafayette are too far to walk, I suppose somebody is going to have to volunteer to take Sennett through Bloomingdale's some Saturday afternoon—Alexander's would do as well, but he seems to prefer people in costume—and show him how intensely active and interactive an experience shopping can be, fixed prices and all. Somebody else may have to take Sennett through the Modern or the Guggenheim or the Met, because even the painters in his School of Paris paint only solitary emptiness—never mind all those lovely Renoir park and dance hall scenes, which apotheosize the romance of urban sociability, of strangers taking delight in each other: never mind Degas's dozens of café, concert, theatre and ballet paintings, where dancers, musicians and audience are swept up together in a magical light; never mind. . . . But I could go on forever. I've gone on till now because the city of Paris and the art that celebrates it are among the most precious resources of civilized man, and an inspiration to anyone who cares about city life; a social theory that looks through them, or grinds them into something flat and dull and gray, is an environmental crime.

Sennett's vision of modern politics is equally monochromatic. Since the end of the *ancien régime*, people have been interested in politics only as a means of exhibiting themselves in public. As a result, no individual or movement has been able to fight for, or even to understand, either class interest or the general welfare. He goes through the revolutions of 1848, the Dreyfus affair, the history of European Marxism—everybody missed the point. The masses are dumb, passive, easily "narcotized." As for leaders, they're basically all alike—Sennett brackets Kennedy, Nixon, Hitler and de Gaulle: none of them stand for or care about anything much; their common strategy is to turn on their "secular charisma," which is meant to "deflect the masses from investing much feeling in social issues. . . ." So it goes. There is no one at all for whom Sennett has a good (or even a charitable) word. His political spectrum seems to range from the meaningless to the monstrous.

This contempt for other people's politics and vagueness about his own gives Sennett's excursions into history a uniformly sour taste. If the Romantic poet Lamartine pacifies an angry crowd during the revolution of 1848, it shows how "the power of personality triumphs over class interests." Like all other modern politicians, Lamartine "needs to do nothing in the public eye" to win the masses' allegiance. "He has no text, and so escapes being measured by any standard of truth or reality." In reality, as it happens, Lamartine did have a text—and we can tell this even from Sennett's garbled account of the event: he was telling the workers, first, that if they tried to proclaim a "Red Republic" in February 1848, there would be a civil war, and they'd lose, and be massacred; second, that they could achieve their aims peacefully by working within the institutions of the Second Republic. On the first point, the workers recognized that he was right, and went home; on the second, they soon recognized that he was disastrously wrong, rebelled and were massacred horribly in June, after which Lamartine's name was buried forever under public scorn. In other words, the workers had a perfectly clear "standard of truth and reality" by which Lamartine's liberalism was given a trial and found wanting. What more does Sennett want? Would their "class interest" have triumphed if they had gotten themselves killed in February instead of June? In focusing only on Lamartine's performance, and ignoring the content of what the man said, Sennett shows how he himself, far more than the masses, reduces politics to a question of personality.

The last sections of the book are both more satisfactory and more disturbing. Sennett affirms the value of city life in a fresh and eloquent way, emphasizing the currently neglected value of "urbanity." In order to enjoy what urban life has to give us, we need to appreciate *impersonality*, i.e., interaction and cooperation with people who are very different from us and whom we'll never really "know." This form of life, taken for granted and enjoyed by city folk in the golden age, is endangered by a "fear of impersonality" that pervades our culture today. Sennett believes that this fear underlies the current revitalization of local, neighborhood and ethnic forms of community. Against urbanists who celebrate these bonds as "community within the city," he argues that what they really represent is "community *against* the city." The neighborhood and ethnic romance often masks a deeper fear of all those who look or think different from "us," and a withdrawal from the larger, impersonal city "out there." This is politically reactionary, in that it leads to a "logic of local defense against the outside world, rather than a challenge to that world." Worse, it is humanly impoverishing to those who enjoy it most: in desensitizing them to the possibilities of the great anonymous city "out there," it deprives them of one of the primary sources of energy and delight that mankind has created for itself over its long history.

All this is true, and eloquently said. Yet there is something suspect about the voice that says it. Can a man really love the city if he can't stand the people in it? His attack on localism is grossly abusive to those who are involved in it. He can't even imagine any reasonable motives on their part—e.g., a belief that locality is the only level at which most of us can participate actively, take initiative in making policy, exert some effective control over events, and live a public life. Does Sennett think this premise is false? Then let him explain why, instead of impugning the character of those who believe it—they are escapists, reactionaries, afraid of complexity, of diversity, of life itself. Here again, it's he more than anyone who is turning political issues into personal ones.

The book's sour taste turns positively rancid toward the end, where Sennett attacks the Jews of Forest Hills: "This

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pleasant, quiet community made itself a ghetto, built its own walls." So they are afraid of what might happen to them, if hundreds of welfare families are dropped into their neighborhood overnight? Not only do their fears have no basis in reality—sheer "ethnic isolation" and "Jewish paranoia," Sennett says—but, surprise, they aren't even really Jewish! That they "used to be Jewish" is all Sennett is willing to admit; but they don't make it any more, because they lack the required religious "inlook." Some of them may keep kosher, but that's only "because kosher poultry is the only fresh-killed poultry to be had in the city." They may cultivate "the shell of custom," but "the heart is missing." For a man who rails against the search for personal authenticity, Sennett is remarkably quick to give readings of people's (indeed, of *a* people's) hearts.

What bothers Sennett about the Jews is that they take themselves so seriously. They don't see that political stances—fear, anger, militancy—are meant to be "masks . . . only the means to power," not faces, "ends in themselves." Once you begin to actually believe the things you say, you're breaking the rules of the political game. Maybe Forest Hills, a neighborhood with large concentrations of Holocaust survivors and Israelis, would have been more willing to play, if only the Final Solution and the recent Six Day War had been played with masks instead of real people. When Sennett tells us not to take politics personally, it would be easier to recognize his good faith if he recognized that all too many of us have been forced to take it all too personally. He might recruit more people to join the elegant masked dance if he had the vision to look them in the face and see what their eyes have seen. He might even see some rich and strange political theatre, which his indifference to faces leads him to miss: he might see people playing the role of oppressed victims, working their audiences, manipulating their sympathies, playing on their guilt, appearing at once pitiful and threatening, turning suffering into an asset and a racket—and yet, at the same time, actually *being* oppressed victims, and suffering in far worse ways than they think. Jean Genet's political theatre—*The Balcony* (on workers and the Left), *The Screens* (on women and the Third World), *The Blacks*—explores brilliantly this form of theatrical politics, and brings out its tragicomic depths. Sennett, sticking to surfaces, locks himself out of the best shows in town.

When Sennett isn't looking down on people, he's looking through them. As a professor at NYU, he works on Washington Square, one of the great public spaces in the world. At any given moment, he is surrounded by hundreds or thousands of people of every race and age, acting and interacting: making music, harmonizing and improvising; playing dozens of different ball games, often without a ball; playing or kibitzing at checkers and chess; airing and comparing their babies; making love, or looking for some; agitating, arguing, distributing leaflets in every known cause, and many unknown ones as well; performing magic tricks for love or money; or merely hanging around, taking in the scene, seeing and being seen. But none of this, alas, happens in Sennett's city; as far as he is concerned, nothing like this has happened for the last 200 years. I picture him trudging through the square, wrapped up in his theory that all modern men are wrapped up in themselves, oblivious to the overflowing life all around him. Too bad, because this public life, as spectacular as ever in the cities of today, can rescue us from our personal sorrows and anxieties, nourish us and renew our strength, help us make it through the day and night.

Why can't he see it? Knowing little about Sennett except what he projects in this book, I can make a guess: it's his theoretical framework that increasingly constrains, and finally strangles, all his most engaging qualities: his intellectual playfulness, his speculative audacity, his openness to life. His sensibility propels him in fifty directions at once, down every path of life and history; his theory pulls him back, decrees that all the roads are blind alleys, that nothing has really happened or changed or developed, that the rich variety of modern life is illusory, it's all just one big wasteland in the end. Eventually the theory wins, and becomes self-fulfilling: his conviction that there's nothing there closes him off to anything complex or beautiful or exciting that might be there; he finds just what he is looking for, nothing.

There are moments when Sennett seems vaguely to suspect this. At one point, he says, "All our familiar friends —dissociation, alienation, and the like —come into the picture." His irony and mockery here are turned against no one but himself. He is confessing, perhaps inadvertently, that his own thought has become tedious to him: the ideas he is about to use are such an old story that it would be a drag to explain or even ("and the like") specify them. And he's right, of course: the picture of modern society as a one-dimensional wasteland, an image mechanically reproduced for so many generations (from Ortega and T.E. Hulme to Ellul and Marcuse), has long since become a stale cliché, comforting at first by its familiarity, but stifling and deadening in the end. If social theorists want their minds and their world to come to life again, they need to make new friends.

As for our cities, what they need is not so much spaces or people ready for play: of those they already have plenty —theatres are jammed, parks are worn out from overuse, 52nd Street attracted a million souls to its yearly festival recently—and more power to them! What they need is citizens who are willing to work for their cities as intensely as they play in them, to identify their personal happiness with civic happiness, to support them both with their purses and with their persons—rather than what Americans have generally done with their communities, using them till they're worn out, then throwing them away and moving on. When modern men begin to take responsibility for their cities, when governments recognize cities as public resources, then the term "public man" will mean something again. □

A System for Elitists

NOT ABOVE THE LAW: The Battles of Watergate Prosecutors Cox and Jaworski. *By James Doyle. With an introduction by Anthony Lewis. William Morrow & Co. 420 pp. $10.95.*

ADAM CLYMER

Jim Doyle is still angry.

The lawyers' memoirs of the Watergate prosecutor's office, by Leon Jaworski and by Richard Ben-Veniste and George Frampton, are puffed with self-satisfaction. The broader works, Theodore White's *Breach of Faith*, Woodward and Bernstein's *The Final Days*, and even the plainly superior *Nightmare* of Anthony Lukas also share a tone of satisfaction with the fact that "the system worked."

Feisty Jim Doyle, a fine reporter who became a uniquely effective flack, could

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have written from that perspective. The office he worked in got Haldeman, Ehrlichman, Mitchell, Colson, Dean, Krogh, Kleindienst (a little) and helped the Congress get Nixon. And Doyle made an important contribution internally in helping lawyers understand how appearances and public perceptions mattered in this uniquely political legal setting, and in helping reporters understand why the lawyers felt the best principles of their trade constrained them to do things that sometimes seemed a little odd, a little timid.

But Doyle writes instead with unabated fury at Nixon and the men who tried to help him get away with Watergate and the cover-up. Especially the latter. J. Fred Buzhardt and Alexander Haig are not the distraught patriots, loyal to their Chief but worried for their country, that some writers have made them. Doyle depicts them instead as mouthpiece and henchman.

Nor does he smile contentedly over "the system." True, it got some of the worst offenders, and it forced a crooked President from office. But recognizing the importance of those accomplishments does not diminish its failings. Doyle highlights them in the most thoughtful chapter of the book, an epilogue which focuses on the nonprosecution of William O. Bittman, a Washington lawyer who lied to the prosecutors about Howard Hunt's blackmailing the White House and who collected cash payments for Hunt and upon George L. Hart, the sad excuse for a judge who all but apologized for having to accept former Attorney General Kleindienst's guilty plea:

> Watergate justice was just as erratic as the criminal justice system has always been; deferential to the mighty, blind to inequities. It is a system for elitists.

Most of his book is an inside story of how the prosecutors worked, of the things they detected, and occasionally of things they missed, like an early lead on the existence of the White House taping system. The flavor of talk within the office, of the ambitions and disappointments and personalities, comes through very clearly. The most important internal problem was plainly the tensions that surrounded Leon Jaworski, the suspicion with which he was greeted and which he never entirely allayed.

Doyle was readier to give Jaworski a chance than were many of the young lawyers. But he also writes critically about the Texan who succeeded Archibald Cox. He makes it clear he does not know what to believe about the

WATERCOLOR: APRIL

Violet, coral, lemon.
The tissues of the flowering trees
streak the wind.

Mark Perlberg

Jaworski-Haig meeting on August 8, 1974 and what promises, or impressions, Jaworski left with Haig about whether Nixon would be prosecuted. And while Jaworski's toughness and determination are clearly portrayed, Doyle also quotes James Neal, the prosecutor of the cover-up case, on learning that lawyer Herbert J. Miller would represent Nixon in dealings with the prosecutors: "That man will skin Leon Jaworski alive."

There are dozens of small anecdotes and revelations here that would have made front-page stories at the time. They make this book an essential element in the sort of definitive study that will be written when the Nixon papers, the prosecutors' records and the impeachment material become public. Two anecdotes in particular seem worth noting now. It was not the White House but Cox himself who first came up with the idea of a "verifier" of tape transcripts as a substitute for getting the tapes themselves in the fall of 1974. Why the White House never pointed that out at the time is beyond me. Cox wanted former Solicitor General J. Lee Rankin. Nixon insisted on John Stennis who was known for never challenging Presidents. (The Rankin suggestion was not really Cox's preference but a response to a fear that he might never do any better than transcripts.)

The other revelation is the clearest picture we have yet had about what it was the grand jury turned over to the House impeachment inquiry. Doyle doesn't quote it, but the description of the "non-accusatory" document, the "road map to impeachment," is clearly stated:

> This is how the road map worked: One page might say, "on March 16, 1973, E. Howard Hunt demanded $120,000." Then it would list page references to grand jury testimony from witnesses who saw Hunt's blackmail note and references to the tapes where Hunt's demand was discussed. The grand jury transcripts and the tape transcripts would be included. . . .

The shortcomings of the book are a slow start, which may discourage a reader who has managed to shake his Watergate addiction, and insufficient focus on the Kleindienst and Connally cases. They were peripheral to Watergate, but the Jaworski decision to accept a minor plea from Kleindienst had a major impact on our perceptions of the Texas lawyer, and of easy treatment for lawyers by lawyers. The Connally acquittal had a devastating impact on the nerve of the prosecutor's office, on its willingness to go ahead with some of their remaining difficult cases.

The strengths that make this book an essential piece for understanding Watergate far outweigh those gaps. Doyle's reporting, as in his fine chapters on the Saturday Night massacre, is consistently good. But his real strength lies in the judgments and connections he makes. The most important of these is the debunking of the myth of the "smoking gun"—the June 23, 1972 tape on which Nixon told Haldeman to use the CIA to get the FBI off Watergate. The release of that tape on August 6, 1975 was cited by Republicans in Washington as at long last, "hard" evidence of the President's guilt.

Baloney. The tape was only a happy excuse for them to jump ship. The March 21, 1973, tape with Nixon's repeated orders to pay off Hunt to buy time and Hunt's silence was plenty of evidence of guilt. Some of the resourceful Republicans who thought of themselves as defense attorneys, such as Rep. Charles Wiggins of California, invented excuses for that one. They could have done the same with the June 23rd tape, but they were enraged and embarrassed, and no longer saw the point; they knew Nixon would be impeached.

Doyle's correct perception is that "it was not Nixon's position that was made untenable by the tapes. The President's position was already untenable, as the votes of a federal grand jury and the House Judiciary Committee showed. But now the rationale of ignorance was no longer available to James St. Clair, Alexander Haig and J. Fred Buzhardt. They had no further room to maneuver. . . . The smoking gun was anything those three said it was."

As his equivocal treatment of Elliot Richardson shows, Doyle avoided the Washington trap of being too kind to your sources, a trap that has elevated the standing of some of the henchmen who talked to authors. Those falsely favorable impressions of the participants in the second cover-up rankle Doyle, who remains deeply offended by the lying lawyers, the tape erasers, the Haig hints of Supreme Court appointments to Jaworski and Robert Bork, the man who finally fired Cox: "The collusion or acquiescence of high-level government

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officials in the second cover-up—the last minute effort to abridge or hide the evidence—remains one of the shabbier chapters in Watergate history," he writes.

Jim Doyle wrote *Not Above the Law* in a sustained rage at Nixon and his henchmen, and with an abiding anger at the system and how much it failed even when it was succeeding. The result is a very important book. □

Season of Opulence

CLAIMING KIN. *By Ellen Bryant Voigt. Wesleyan University Press. 64 pp. $7.50. Paper $3.45.*

EDWARD HIRSCH

Ellen Bryant Voigt writes with a Southerner's devotion to family and a naturalist's devotion to the physical world. It would be difficult to think of a first book that claims a deeper or more abiding kinship with the rosebush and the catalpa, the stork and the hen, the black widow and "the gray creative worm." She writes of a cat that it is "Exquisite, invulnerable—like the spider spinning his shimmering filigree/or the clear mosaic of the snake's imperial head" ("Animal Study"). Her work abounds with a plenitude of adjectives, with thick dreamy descriptions of a summer spent on some imaginary island or late autumns in rural Vermont. Her poems characteristically encounter the wealth of the natural world at some final moment, on the borders of a wintry death, or at the edge of a ripe harvest, a red clay ploughed to its "green conclusion." The first poem in the book, for example, spends six of its ten stanzas detailing the rich life of six species of wildlife. And it concludes by yoking these inhabitants of an imaginary Garden of Eden to two lovers turning to each other in the first tropical movement out of sleep. "Tropics" engages a warm and drowsy world where

. . . the dragonfly folds
his mica wings and rides
the tall reed

close as a handle. The hippo yawns,
nods to thick pythons,
slack and drowsy, who droop down

like untied sashes
from the trees. The brash
hyenas do not cackle

and run but lie with their paws
on their heads like dogs.
The lazy crow's caw

falls like a sigh. In the field
below, the fat moles build
their dull passage with an old

instinct that needs
no light or waking: its slow beat
turns the hand in sleep

as we turn toward each other
in the ripe air of summer,
before the change of weather,

before the heavy drop
of the apples.

Ellen Bryant Voigt is a poet so immersed in the material, physical world that even when writing of people she naturally compares them to plants and animals. Speaking of a farm wife, drawn into a fatal lock step of domesticity, she asks only that the woman be able to "float/like a fat gull that swoops and circles." And in the title poem, "Claiming Kin," she addresses the rockbed of what she later calls "the family/the circle of fire" and in doing so, in speaking of her life as a child pulled down to her mother's kitchen, she concludes by comparing herself to a single house plant growing in the shade. "Claiming Kin" begins with a mother's voice ("Insistent as a whistle") and ends with a daughter's direct address.

Mother, this poem is from your middle
child who, like your private second self
rising at night to wander the dark
house,
grew in the shady places:
a green plant in a brass pot,
rootbound, without blossoms.

Barrenness is a subject that Voigt returns to over and over again; it is her darkest compulsion. Sometimes this takes the form of "Vacant cornstalks [that] rattle in the field." More often and more affectingly, it is deeply maternal, more desperate and wounded, more womanly. Thematically the poems encapsulate different kinds of childlessness, of loss: in the first, as in "The Wife Takes a Child," speaks of "the offense of my flat belly/the silent red loss of monthly bleeding"; later, in "The House," the poet describes an orphaned life, an empty building with needs and ghostly presences, a place that survives a family's goings, "their multiple/amputations." These poems—raw, deathly, and fierce—have another kind of lining, a sort of Plathean intensity, a bleak energy of mourning. At her worst Voigt descends into the melodramatic, but her best poems have a lush descriptiveness and a keen-edged knifelike clarity.

There are two linked, but somewhat different aesthetic impulses in *Claiming Kin*. Voigt's achievement is to have reconciled them. The first is for a poetry that is harsh, rapturous, wounded, regal. These poems tend to be short-lined and short-winded, carrying news of executions, suicides, drownings and burials. The second impulse strains after a poetry that is richer and more diverse, more patient and playful, more observant of sensuous detail. The poem "Dialogue: Poetics" articulates and energizes this conflict. The first voice begins

Admiring the web, do we
forget the spider? The real
poem is a knife-edge,
quick and clean.

The bird needs
no extra feather, the stone
sits in its own shape.

This is the argument for swift cutting, the delicate surgeon's cruel precision. The second voice responds and closes with two items. The first speaks of the poem's digressive music, the second of following the spider's roundabout movement:

Item:
Not being birds, we seek our own
windpatterns, fashion
the lute, discover language.

Item:
Following the taut strands
that span flower and drainspout,
down the long loops, moving
through the spider's whole house,
we come round to the center
and the patient jewel in its own setting.

Ellen Bryant Voigt's high-pitched and incisive poems often strike directly for the emotional core of their subject, but just as often they do so slowly, patiently, with a lush sense of their own verbal wanderings and enjambments, with a deep sense of the dense, discursive wealth of language. When Voigt speaks of Rich November as "our season of opulence./Festive, extravagant," she might also be speaking of her own poems. As a book *Claiming Kin* is restless, sometimes violent, always physical. Its poems stand on both sides of a barren winter. But in the end, through the magical, saving grace of language, Ellen Bryant Voigt's poems resist and transcend their seasons of hard weather. *Claiming Kin* is a stunning first collection. □

Edward Hirsch has published poems and reviews in Commentary, The Nation, The New Republic *and* The New York Times Book Review.

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ART / Lawrence Alloway

Patricia Hills is an industrious and thinking member of a rather discredited caste: the museum curator. In 1973 she arranged "The American Frontier: Images and Myths" at the Whitney Museum of American Art, followed in the next year by "The Painter's America: Rural and Urban Life 1810-1910," also at the Whitney. Now, at the Whitney until October 2, is her "Turn-of-the-Century America." Each exhibition has been accompanied by a major catalogue providing an intellectual framework for interpreting the works assembled from diverse sources. Such high productivity and purposefulness are rare among curators. The first two shows offered an ideological reading of 19th-century genre painting, discovering the historical forces informing apparently realistic painting. In "Turn-of-the-Century America" her subject is the broad matrix of visual imagery in both high and popular art over a twenty-year period.

Hills is restoring painting to its host culture, in opposition to the aestheticization that accompanies its circulation in galleries, collections and museums. Popular material had been discussed in her earlier catalogues but not shown in the exhibitions themselves. Here, however, posters, cartoons and photographs are included as part of the visual display. She points out that the last decade of the 19th and the first of the 20th centuries were times of expansion in manufacturing, building, communications, foreign trade, consumption and population. She refers to Teddy Roosevelt: "if his tenure did not define the era, it certainly characterized it." She has looked for a corresponding growth in the visual arts and concluded that it cannot be adequately summarized by any single style or medium.

The diversity of the period is declared immediately one enters the third floor of the Whitney. On one side a room with academic figure paintings and sketches for murals, on the other American Impressionist paintings. Compared to French Impressionism the American version of it, protective of precise drawing, seems rather traditional, but in this context it shines like a bunch of flowers. It is a part of Hills's skill to recover and animate the social context of 19th-century art. In addition, the catalogue (Whitney Museum, $10), like her earlier studies, is a solid contribution to the present revival of interest in pre-Armory Show American art, which is, despite academic and decorative elements, predominantly representational. Hence a book on this period calls for curiosity about iconography which Hills certainly possesses. She points out, for example, that many landscape painters represented nature as the *reverse* of the city. Thus their moody scenes can be related to what Maynard Mack called "the literature of retirement," which does not mean everybody more than 65 but does mean opting for rusticity, like Horace in the 16th Ode of the third book, or Cole Porter in *Get Out of Town*.

The New York that the landscape artists rejected is the subject of one of the best sections of the show: "The City, Industry, and Urban Life." Hills observes: "If the photographers, illustrators, and painters did not draw direct inspiration from each other, they were motivated by identical scenes which they witnessed in real life." She cites William Glackens's painting "Central Park: Winter," ca. 1905, and a photograph by the Byron Co. called "Recent Vision of Jollity in Central Park," 1898. Both depict one world. The romanticism of early modern New York is shared by Edward Steichen's photo "The Flatiron Building—Evening," 1905, and Birge Harrison's undated painting "Fifth Avenue at Twilight." Comparable in urbanity are the painters of "The Eight," several of whom began life as newspaper illustrators. An exhibition like this, by bringing together channels of communication usually separated, gives us a rich sense of message-density and will encourage precise research in the future on cross-media exchanges.

"Turn-of-the-Century America" convinces us of the multiplicity of genres and of the ubiquity of certain themes, such as retirement landscapes and a romanticism of the street, shared by painters, photographers and graphic artists. Owing to exigencies of hanging, however, some of the interconnections between different media are implicit rather than shown on the walls of the museum. For instance, the idealized nudes of the Mural Movement seem

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akin to figures in commercial art. If some posters and some of the evidence of the Mural Movement had been hung together, the point might have been clarified. (Or more might have been made of Maxfield Parrish: there is only one example of his work in the show, but he is a key figure in the transfer of "high-art" resources to mass-reproduction use.) It is not easy to present magazine covers and mural sketches simultaneously, and Hills has also kept portrait painting and portrait photography apart. But it would have been instructive to see them in proximity, even if it made the Whitney look more like the Museum of Natural History than its usual self. Why not?

Hills draws a parallel between the period on which she is working and the present situation in American art. Briefly she sees a transition from aestheticism to realism, traceable in most of the arts, including photography. She reminds us of the contemporary distinction between documentary and "pictorial" photography, the latter subject to manual titivation for aesthetic purposes. After 1913 of course realism was under increasing pressure from the success of the Armory Show, which Hills takes as a sign of "disillusionment and pessimism" caused by World War I and all that. Modernism to her is a retreat to formal games: "in other words, art for art's sake was reborn in modernism." I can see that now, more than half a century later, "modernism" may be formalistic, but I find it hard to assess its early phases in quite this way. In a sense the 1890-1910 expansion did not stop in art but continued to absorb cosmopolitan models and further style changes hungrily. □

THEATRE

HAROLD CLURMAN

Paris

It would seem from my brief reports on three cities—Stockholm, London and now Paris—that I visit these capitals only to comment on theatrical matters. Not so: I go to survey the native grounds from which theatres emerge, the spirit of place and time. The acting in the various countries furnishes clues to the general temper.

To recapitulate a bit: in Sweden, except for a younger generation astir with discontent, there is a kind of safe routine in the performances, competent but rarely exciting. In London, where due to economic problems film production is at a standstill, the theatre is still alive with protesting playwrights who most often write comedies of disgust, and much of the acting is at its best when at the service of ridicule or anger. (On the other hand, the presentation of English classic drama is marked by either eccentric innovation eschewing grandeur, or by a style largely rhetorical.) In Paris, the theatre is for the most part in the doldrums, with acting occasionally expert, frequently repetitious of conventional effects.

Paris itself, except for its plague of automobiles and the diggings to provide underground garages, is still physically beautiful. Even its wounds are fascinating. One cannot be sure whether these are signs of a festering decline or of some as yet undecipherable revival.

The signal example of this puzzle is the recently opened Pompidou Center, familiarly known as "Beaubourg." It is a horror and a wonder; like a gigantic mechanical toy, a phenomenon of science fiction. What would conventionally be its guts—immense funnels, gadgets, pulleys, vents, ramps, with here and there applied clashing colors—compose its façade. And inside its iron platforms, runways, galleries display the same machine-like bareness. They seem to symbolize the industrial age in all its intricate unfunctioning or useless functionalism. The result becomes a new sort of decorativeness.

There are two libraries: one is devoted to *actualités* books, magazines, newspapers, spreading information on current events; the other contains educational and literary material. Provision is made for concerts of avant-garde music and for exhibitions of modern art (the latest offers a contrast of parallel developments in New York and Paris); there is a miniature scenic railway. At bookstalls one may buy art books and reproductions, as well as recordings. I could not tell whether I was actually hearing raucous sound blaring from all sides, but I had that impression. Lectures and group discussions go on constantly. Smoking is permitted.

The entire establishment teems with activity. Inside and out, there is a fun-fair atmosphere especially designed for the young and possessed by it. "Paris is not a museum," said Pompidou, the banker-Prime Minister who was chiefly responsible for the center. So "Beaubourg" in no way resembles the Louvre. From the center one can contemplate the grave splendor of Notre Dame in the near distance. Monstrously exciting, whether depressing or heartening, a new Paris is arising today amid the ancient glory. It's the latest and best "show" the city provides.

There is a sprightly grace and fragile charm in such a production as that of *Les Fausses confidences* by the delightfully delicate 18th-century playwright Marivaux. But, broadly speaking, the French theatre is at a dead end. It brings to mind old stage props and settings gathering dust in a warehouse. Much of the acting is of similar quality.

Yet there remains some of the exuberance we associate with the French. It is a national trait; on the stage, a professional habit as practiced as a demagogue's sincerity. It knows all the tricks, plays to the galleries. Its boldness is often vulgar, a kind of self-congratulatory boastfulness. This was particularly true in the star performance of *Le Faiseur* (The Swindler), Balzac's mordant comedy. It was tremendously facile; the old trouper, Jean Moulain, all but winked at the spectators. (They loved it.) Such histrionic maturity has the savor of rottenness. There is an absence now of the refined wit and cutting intelligence of a Jouvet or a Dullin. Among playwrights, no one has come to stand beside Beckett, Genet, Ionesco, Camus, Sartre, who contributed so much tang and significance to the French stage of

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the late 1940s and 1950s.

Yet this does not bespeak the "end." Theatre history shows many recurrences of such hiatuses, often lasting for decades, to be followed by astonishing upsurges of vigor. An example is the nullity of writing for the theatre in England between Sheridan and Oscar Wilde. Only the romantic actors—Kean chiefly—kept the stage alive.

The result of my intense playgoing abroad was to revive my respect for American actors. They unfortunately lack the support of consistent stage employment, nor are they afforded the chance to play a wide variety of roles. They are often limited in cultural background, raw in artistic conception and crude in expression; yet these very constraints, in and out of their profession, often give them a kind of impatient fervor, a headlong drive to assert some suppressed or neglected part of themselves. It lends their acting the heat of inner fire and honest feeling. The very tensions which to some extent disable them provoke extraordinary outbursts when they are given an opportunity to show themselves as sentient beings. They may be deficient in artistry and craftsmanship, but their impulses have living force. Perhaps there is some advantage in our still being an "unfinished" people. □

INDIGENOUS MUSIC/ Nat Hentoff

In the vast, sprawling and more than occasionally opaque literature of postmodern jazz composition, Carla Bley has established a small redoubt where, indifferent to modish trends, she creates luminous, lyrical but also sinewy pieces. The shorter ones in particular are characterized by strong melodic lines, a gracefully supple sense of time, and coolly self-assured wit. Bley is a true original of seemingly modest scale, but I rather think that much of her work will endure longer than that of some of her more hugely shouting contemporaries.

The most recent offering of her compositions is *Dinner Music* (Watt/6) on which, playing piano and organ, she is joined by a small combo of quite distinguished soloists who also fuse convincingly as a collective force. The most arresting of the horn players is Roswell Rudd, a trombonist of great curiosity who has both enthusiastically researched the history of the jazz trombone and extended its range and sound. While capable of rollercoasterish avant-garde surprises, Rudd is here more bluffly, warmly of the jazz mainstream with the tone and swagger of a most amiable bear.

All the performances, like Carla Bley's compositions, are immediately assimilable which does not mean they are superficial. *Dreams So Real,* for instance, is a classic distillation of jazz balladry—with Rudd, alto saxophonist Carlos Ward and guitarist Eric Gale. Their stories, as someone once said of Duke Ellington's ballad players, stay in the mind long after the music has stopped.

There are a good many other pleasures, some sharply pungent, in this set, which all the way through has an unusual ambiance of total ease. That is, the players sound as if they were in a friend's spacious apartment where there are no clocks, rather than in a recording studio. To this day, that degree of naturalness is rare on records, and its palpable presence here is a further tribute to Carla Bley as co-producer of the date. Furthermore, manifesting another rarity in the work of advanced jazzmen, most of the tracks are invitingly, almost irresistibly danceable. In sum, *Dinner Music* is an album that will be as savory and cheerily functional years hence as it is now.

The label, Watts, is owned by Carla and Michael Mantler. Like scores of other independent (meaning small) jazz companies, it is distributed by the New Music Distribution Service of the Jazz Composer's Orchestra Association (in which the Mantlers are also active).

A nonprofit endeavor—both by intent and also by the economic facts of musical life—this distribution network is of vital importance to scores of labels which commercial distributors habitually ignore. Some of the companies in this survival alliance have other ways of getting their recordings about, but New Music Distribution Service is the one place where a venturesome listener or store owner can easily have access to the full catalogues of all the participating firms.

Since the primary aim of the Mantlers and their colleagues is to help all forms of experimental music find their audiences, there is also a sizable listing of hard-to-find classical albums as well as uncategorizable sets and, of course, a bristling cross section of post-Coltrane music by players who prefer not to call what they do "jazz." For a catalogue: Jazz Composer's Orchestra Association, New Music Distribution Service, 6 West 95th St., New York, N.Y. 10025. Individual collectors can then order directly by mail.

During the past decade or so, a growing number of musicians have been establishing their own labels—some of them in collaboration with other performers. The obvious reason is that the major firms have no interest in albums that do not sell in robust quantities. Occasionally, a big-league label will add a jazz division under the delusion that jazz finally is about to reach a large popular audience. In time, the company's accountants pierce the delusion, and the jazz wing is amputated.

For the small independents, who are not subject to this delusion, the basic goal is to get their music out, even if only to a few thousand people. The next step, which some musicians have already taken, involves setting up their own nightclubs, so that if all else fails, they'll have a home in which to play. Still not explored in any significant way is the idea of a co-op musicians' booking office which could establish a playing circuit not only in clubs throughout this country and abroad but also at college campuses and, for that matter, in high schools.

For serious jazz and post-jazz players, indigenous socialism may be the only way to maintain creative independence. □

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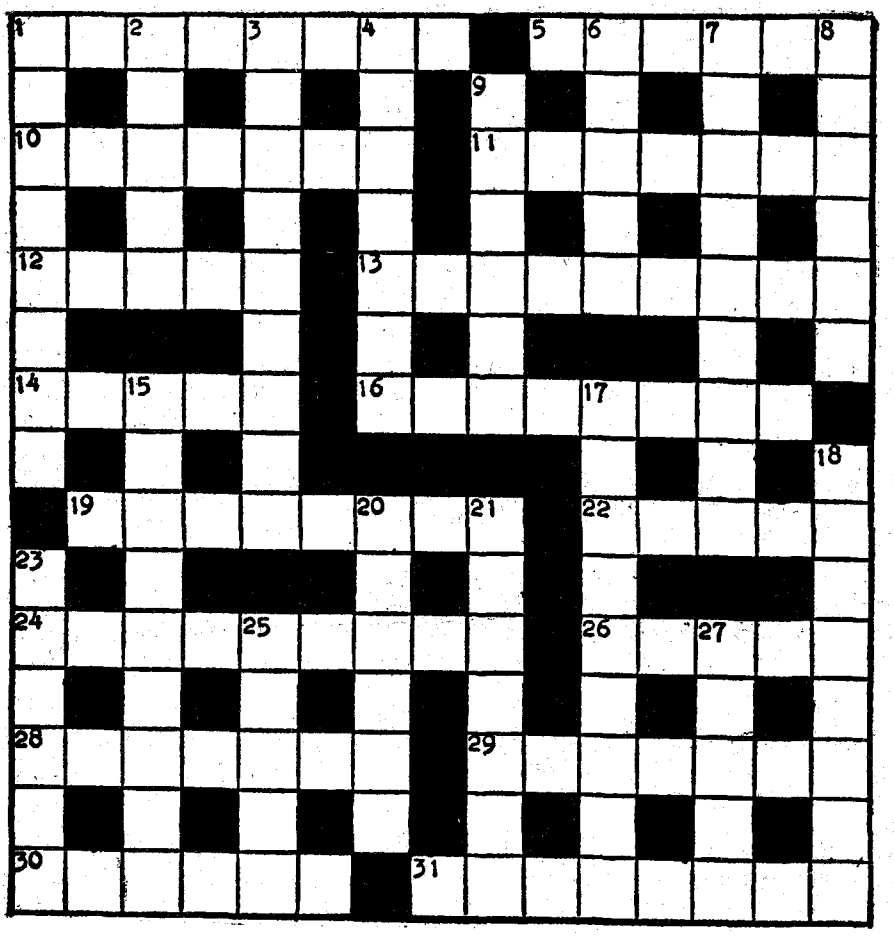

ACROSS

1, 5 and 29 Bad debt ran true to form with them—and yet they say "Thanks!" (5,3, 6,7)
10 Coming out of a daze can get passage for the virtuoso. (7)
11 In meaning, by the sound of it, to make one angry? (7)
12 After a fashion, play a little way with spirit. (5)
13 Balance the way to fit out a French department with it. (9)
16 Walker when young might have been doing it. (8)
19 Approaching sailors make it, suggesting an earth slide. (8)
22 It goes round in both directions. (5)
24 If Three-X, a mineral has it, but you'll have to look and look again. (9)
26 Nagshead, only a possibly material change. (5)
28 What made Theda Bara mad? Dracula, perhaps! (7)
29 See 1 across
30 One might be on the track of a climbing plant. (6)
31 Very small, and sort of stops around a pulpy fruit. (8)

DOWN

1 and 23 Some football players dine at the club, possibly—one is likely to tell you how to get there. (4-4,6)
2 and 15 Not necessarily like Brigham Young, a churchman-politician. (5,9)
3 Change my diet and get blown up? (9)
4 A good listener in the home should be the closest thing. (7)
6 Tell didn't want to take the lid off. (5)
7 A number of players on the court bring up wrong-doing, with a final result being something beginners might find it hard to get over. (6,3)
8 Atolls might be with the exposed surface reduced. (6)
9 and 14 Bonded whiskey might be so listed, if you have enough of it. (6,5)
17 It really isn't only the upper crust who indulge in such spectacles. (Anyone might hold one.) (8)
18 One rears this way, or sometimes does it to the rear. (6,2)
20 You could have it perhaps be said, one tolerates things this way. (6)
21 To tell the truth, quickly? Quite the other way, ducks! (4,3)
23 See 1 down
25 Quick drink around four? (5)
27 Suggests the things that permit the water to go out of vegetables. (5)

SOLUTION TO PUZZLE NO. 1688

ACROSS: 1 Broken English; 9 Deeds; 10 Iron horse; 11 Indians; 12 Nol-pros; 13 Chase; 14 Ingestion; 16 Late shift; 18 Patio; 19 Tote bag; 21 Precede; 22 Originate; 23 Irons; 24 Flash in the pan. DOWN: 1 Bad circulation; 2 Overdraft; 3 Enslave; 4 Exits; 5 Good night; 6 Inhales; 7 Hirer; 8 Person-to-person; 14 Idiograph; 15 In the soup; 17 Sabrina; 18 Peevish; 20 Thief; 21 Preen.

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■ *The Presidential Primary Extravaganza:* Which Democrat do you think won the New Hampshire primary in 1972? If you said George McGovern — you're wrong. Pollster Burns Roper recently shared with *Review* readers his view that the press, the pollsters and the politicians consistently mislead and confuse the public during primary season.

■ *The Deadline Rush at Wounded Knee:* So great was the pressure to make the next edition that words like "ambush" and "execution" were rushed into print before the facts were known. Wounded Knee was a tragedy — but not the kind of melodrama reported in the press.

■ *The Bum Steer:* Sometimes the hot news isn't so hot. Like the ballyhooed but fraudulent 70-mile-per-gallon plastic car called "the Dale." Hundreds of customers (and far too many reporters) were thoroughly gulled by this one. Or the charge that Alexander Butterfield, the man who blew the whistle on the Nixon tapes, was really "the CIA's man in the White House." That one fizzled out when the facts failed to support it — but not before it had been widely published.

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